(1) பக்கங்களின் எண்ணிக்கை _____

(2) புதுக்கித் திருப்பிய நாள் _____

(3) ஆதாரங் குறிப்பவர் சுருக்கொப்பம் _____

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

Raasu _____ துறை

அரசாணை எண். 437-438 அச்சகம்
மு. கோப்புத் தாள் எண். பலவகை

நாள்: 29-4-1882 199

மடிக்கவோ சுண்டபடி கையாளவோ கூடாது.

ஆவண. கா. 1—18,006—6-9-90.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—again G.O., dated 13th March 1876, No. 366.

READ—also the following Proceedings of the Board of Revenue, dated 7th March 1879, No. 618:—

Read—the following file of replies to Board's Proceedings, dated 28th March 1876, No. 851:—

Letter from the Collector of Ganjam,			dated	11th June 1877, No.	1956.
,, ,,	,,	of Vizagapatam,	,,	28th Oct. 1876, ,,	1524.
,, ,,	,,	of Godávari,	,,	2nd June ,, ,,	151.
,, ,,	,,	of Kistna,	,,	14th Sept. 1877, ,,	1993.
,, ,,	,,	of Nellore,	,,	16th Nov. 1876, ,,	3214.
,, ,,	,,	of Cuddapah,	,,	19th Sept. ,, ,,	238.
,, ,,	,,	of Bellary,	,,	27th Aug. 1877, ,,	681.
,, ,,	,,	of Kurnool,	,,	7th July 1876, ,,	304.
,, ,,	,,	of Madras,	,,	28th ,, ,, ,,	252.
,, ,,	,,	of Chingleput,	,,	20th June ,, ,,	374.
,, ,,	,,	of North Arcot,	,,	17th Aug. ,, ,,	387.
,, ,,	,,	of South Arcot,	,,	26th July ,, ,,	327.
,, ,,	,,	of Tanjore,	,,	24th Jan. 1877 ,,	287.
,, ,,	,,	of Trichinopoly,	,,	15th June 1876, ,,	161.
,, ,,	,,	of Madura,	,,	12th Aug. ,, ,,	300.
,, ,,	,,	of Tinnevelly,	,,	8th July ,, ,,	431.
,, ,,	,,	of Coimbatore,	,,	10th June ,, ,,	117.
,, ,,	Commr.	of the Nilgiris,	,,	9th ,, ,, ,,	32.
recorded in Board's Proceedings, dated 7th March 1879, Mis. No. 2224.					
Collector of Salem,			dated	15th Nov. 1876, No.	301.
,, ,,	,,	of South Canara,	,,	15th ,, ,, ,,	2127.
,, ,,	,,	of Malabar,	,,	25th Aug. ,, ,,	226.

Resolution—dated 7th March 1879, No. 618.

In their Proceedings, dated 8th September 1871, No. 3876, the Board called attention to the judgment of the High Court in Special Appeal No. 9 of 1870, and urged upon Government the necessity of obtaining an enactment affirming in unmistakable terms the right of occupancy possessed by Zemindari ryots, and in G.O., dated 13th March 1876, No. 366, the Government called on the Board to enquire and report whether the results anticipated by the Board had ensued and to what extent. The replies received from District Officers on the subject will now be forwarded for the information of Government. Many of them comprise discussions at considerable length as to what the respective rights of Zemindars and their ryots really are, but as the object of the Government in making this reference was merely to ascertain facts with regard to the operation of the judgment in question, these discussions will be but briefly noticed in the remarks which will be made below.

2. The Collectors of *all* Districts except Ganjam, Vizagapatam, and Nellore report that the ruling in question has had no effect in their Districts. Most of these Collectors and officers consulted by them incline to the opinion that this is mainly owing to the decision of the High Court in the case in question not being widely known, but as a matter of fact nothing has as yet resulted from it to the detriment of the ryots.

3. Mr. Grahame when Acting Principal Assistant in charge of Ganjam is unable to cite any instance of an ejectment which can be attributed to the judgment of the High Court in the case referred to, but alludes to general complaints of extortionate practices brought against the Zemindars of Chíkati and Kallikót in 1875 as showing that the decision has had the effect of emboldening landholders successfully to enforce arbitrary terms upon their tenants, and of paralyzing the efforts of the tenants successfully to resist the demands of the landholders. In the case of the Chíkati Zemindar, however, there seems to have been a thorough reconciliation between the Zemindar and the ryots after the death of the Diwan, and Mr. Davidson, who was Collector of Ganjam when the complaints against the Kallikót Zemindar were preferred, regarded the ryots' claims as unreasonable and out of the question.

4. From Vizagapatam there is a general *consensus* of opinion that no ryot can now successfully contest a suit of ejectment. Some hold that the decision in question changed the law, others that it merely gave legal sanction to the previously existing practice, but amongst the many Revenue and Judicial Officials, Zemindars and Diwans consulted by the Collector there is not one who expresses an opinion that the effect of the decision has been other than disadvantageous to the position of the ryot. The Acting Senior Assistant Collector writes: "Since the ruling has rendered it clear that tenants have no occupancy rights, the Civil Courts are extensively resorted to, and the present practice is to pass a decree of ejectment on proof that the term of the putta has expired," and this statement of the existing state of affairs seems to be fully borne out by the other testimony adduced.

5. From Nellore the Collector reports that he does not learn that the tenure of lands generally has been rendered precarious by the ruling; but two cases* are cited in which it is stated that a decree in favour of the Zemindar of Kálahasti was specifically based on the High Court's decision in question. Copies of the District Court's judgments in both cases are forwarded. In only one of these, viz., Regular Appeal No. 29 of 1873, do the Board find any allusion to the decision; but the case is an important one, as it appears that under the High Court's ruling the District Judge, though expressing much regret, considered himself to be bound to decide against a tenant of seventy-three years' standing on the ground that his lease was clearly from year to year, determinable at the close of any particular fasli.

* Regular Appeal No. 21 of 1873.
" " " 29 " "

6. It will thus be seen that it is only from three districts that the decision of the High Court in question is reported to have led as yet to the results anticipated by the Board. As regards Ganjam the connection between the cases cited and the High Court's decision is not very clear; in Nellore, though the ruling has as yet had no general effect, it has received judicial notice in very decided terms; and in Vizagapatam it seems to be generally conceded that the decision has in effect dealt a death-blow to the hopes of the party who contended that the Zemindari ryot was not a mere tenant-at-will.

7. The Collector of Cuddapah remarks that, as there was a special contract in the case in question, he doubts whether the ruling goes so far as to lay down that every tenant can be ousted at the caprice of his landlord, and the same view is advocated at great length by the Diwan of Venkatagiri. There is no doubt much truth in this view, but it seems to be clearly established that wherever the judgment has been relied on by landlords it has had the practical effect of rendering the tenant's tenure a much less secure. Perhaps this might be counteracted by getting a well-[illegible] case brought under the judicial cognizance of the High Court, as suggested [illegible] of the Diwan's letter, and Collectors might be instructed accord-[illegible] differ greatly and a really representative case may not be easy

to find. The Board incline to think that the whole question of the relations of Zemindars as landlords stands at present on a very unsatisfactory footing, and that the sooner the difficulty is faced and dealt with in a thorough and efficient manner the better for all parties concerned.

8. The questions of their relations to their tenants, of their liabilities in times of pressure and famine, of their responsibilities as regards keeping up public works† on which the well-being and indeed the lives of numbers depend, of the status of village officers in Zemindaris, of the maintenance of village accounts and collection of statistics, each and all of these questions seriously demand attention and the Board do not see that it can be efficiently given unless an officer or a commission is specially deputed for the enquiry. In their opinion the subject is large enough and important enough to render such a course most desirable.

† G.O., Public Works Department, dated, 16th September 1878, No. 722-I.

(A true Extract.)

(Signed) J. STURROCK,
Acting Secretary.

To the Secretary to Government, Revenue Department, with a file of replies, and copy of Board's Procs., 7th March 1879, Mis. No. 2224.
" all Collectors.

READ—also the following G.O., dated 18th March 1881, No. 475, Revenue.

Read—again the following letter from C. L. TUPPER, Esq., Officiating Under Secretary to the Government of India, Home, Revenue and Agricultural Department (Revenue), to the Secretary to the Government of Madras, dated Fort William, 24th February 1881, No. 160:—

I am directed to forward an extract* from the Report of the Indian Famine Commission, Part II, Chapter III, Section 1, on the subject of the position of the tenants in the Madras Presidency, and to request that the Government of India may be favored with the opinion of His Excellency the Governor in Council on the points raised.

* Paras. 31-32 and 40 to 44.

ENCLOSURES.

Extracts from Report of the Indian Famine Commission (Part II) Chapter III, Section 1.

Para 31. But the question of subletting seems to us to be one of even greater importance. The more valuable the occupancy right becomes by reason of such measures of protection as we have advocated, the more need there will then be of guarding against a custom which is everywhere prevalent in India, under which the privileged tenant is apt to turn into a middleman, subletting the land and living on the difference between the rack-rent and the privileged rate secured to him by the law. The occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator; and the object of the law should be to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights. If this can be secured, the chief danger in the way of making such rights marketable will be removed, for they will not be able to pass into the hands of money-lenders, and if a tenant who becomes deeply involved is sold up, his land will pass to another tenant, presumably a more thrifty man, and the public interests will not suffer by such a substitution. We therefore recommend that concurrently with the extension of the right of transfer the practice of subletting by an occupancy tenant should be discouraged, or even, if possible, forbidden. Care must no doubt be taken lest such a measure should work harshly. But if a tenant, for a long period, fails to keep up the stock required for cultivating his land, or otherwise ceases to be by occupation and habit a *bonâ fide* cultivator, the rights he or his ancestors acquired by cultivating the soil might reasonably pass from him to the person who, having become the actual cultivator, occupies his place. We conceive that it would not be difficult for the Rent Courts to investigate and

decide the question of fact, whether a tenant with occupancy rights has or has not wilfully ceased to be a habitual cultivator in respect of the whole or any part of his holding; and when such lapse is established the occupancy right might be held to have passed to the person to whom the actual cultivation of the land has been transferred.

32. The tenants-at-will form a large and an increasing class, the growth of which in some parts of India cannot be looked on without serious apprehension. They are kept in a situation of absolute dependence on the landlord, which takes away the desire to improve the land or to raise their own position, or to lay by anything from the profits of agriculture. The soil, therefore, is not unlikely under such tenants to become year by year less productive, and the tenant, having neither credit nor stores to fall back upon, becomes a prey to the first approach of famine. It is much to be desired that for tenants of this class some means should be provided by which they might, without injury to the landlords, secure occupancy right in the lands they hold. It seems not impossible that a plan might be adopted under which, with all reasonable attention to the interests of the landlord and with suitable limitations as to the character of the holdings to which the plan would apply, an estimate should be made, either in the form of a rate per acre occupied or of a percentage on the rent paid, which shall represent the annual amount which a landlord gains by his tenant not possessing occupancy rights, and that on the tenant-at-will making good, by instalments during a certain number of years, a sum equal to the capitalized value of that amount, in addition to his present rental, he should thereby obtain the privilege and the advantages of security of tenure which attach to an occupancy tenant. No useful end would be obtained by our entering further into the details of such a scheme as this, but we think that the subject is of such importance as to call for the consideration of the Government. It would, we conceive, operate in the direction of restoring to the cultivating class the protection which they had under the ancient custom of the country against extreme pressure by rack-renting, but which they have, in a great measure, lost under our rule; and we hope that it, or some similar plan, may be found suitable for adoption, in order that those among the tenants-at-will who are the best cultivators, and the most thrifty persons, may have an opportunity of raising themselves from their present precarious situation to the more secure position of an occupancy-tenant.

Extracts from Report of the Indian Famine Commission, Part II, Chapter III, Section 1.

Para. 40. In consequence of the tendency on the part of those who are recorded as ryots to sublet their lands or part of them, and to live on the difference between the rents they receive and the revenue they pay to Government, a considerable class of subordinate tenants is growing up who have no permanent interest in the land, and who pay such high rents that they must always be in a state of poverty. These subordinates are not recorded or recognized in the Government registers, but the existence of such a class involves the same evils as we have dwelt on in the case of the tenants-at-will in Upper India. We think that the question should be submitted to the consideration of the Local Government, whether it is contemplated that, under the Land Revenue Settlement, Government ryots should be permitted to sublet their lands, and if so, whether measures should not be taken for recognizing the status of such sub-tenants and recording the area they hold, the rents they pay, and the conditions of their tenure.

41. In the Madras Presidency several amendments of the law regulating the relation of the great Zemindars to the class of cultivators who hold under them and who are in number about a million are desirable. For many years these tenants appear to have enjoyed rights closely corresponding to those of the Government ryot, and Regulation IV of 1822, which governed the subject, virtually recognized the existence of these rights, and provided various safeguards for their preservation. In like manner the Rent Act VIII of 1865 implies, without affirming, the existence of these rights and lays down several rules for their better enforcement. So far as we have been able to learn, the existence of these rights was never seriously questioned till a judgment of the High Court passed in 1871 was understood as laying down the proposition that a Zemindari tenant is *prima facie* a tenant-at-will, and that in the absence of proof of a custom to the contrary, the landlord's right to enhance or eject must be presumed.

42. This view of the law (which it is possible that it may not have been the intention of the Court to affirm) is deprecated by other high Judicial authority, by the Board of Revenue and by numerous Collectors who have been consulted on the subject. The general result of the evidence received by the Commission is that the effect of the inadequate wording of the Rent Act of 1865, coupled with the ruling of the High Court, has been to alter the legal position of Zemindari tenants and to render it precarious, exposing them to many forms of oppression, and excluding them from all the benefits which it was the object of the Regulation which gave a legal status to the Zemindari system, and of the Rent Act to secure for every class of tenant; and that the ill-consequences of this defect in the law are likely to become more apparent as the new view becomes better known. We entirely concur in the opinion expressed by Mr. Justice Innes and the Board of Revenue, that legislation is necessary, and that its postponement cannot fail to prove detrimental to the status of this large class of cultivators. The right course

would, we think, be to provide that all tenancies should, *prima facie*, carry a right of occupancy, and to throw on the landlord the onus of proving the facts from which a non-occupancy tenure has to be inferred: such facts would be a commencement of the tenancy by a contract reserving to the landlord the right of eviction, or a clearly proved custom of eviction.

43. The same observations apply equally to the occupants of land in villages owned by Inamdars or other persons to whom Government has transferred all or part of its right to the land revenue. In these cases, as well as in the Zemindaris, it is essential that the villages should be surveyed, village accountants kept, and all village papers and statistical returns duly furnished which are needed for the information of the Government, and the record of the rights of the parties concerned; and we recommend that measures should be taken to carry out this suggestion.

44. The remarks we have made in the case of the Bombay Presidency as to the position of the subordinate tenants under the registered ryots apply with equal force to the Madras Presidency.

Order—dated 18th March 1881, No. 475, Revenue.

Miscellaneous.

The extracts received with the foregoing letter will be circulated to the Board of Revenue and the gentlemen named below, with the request that they will favor Government with an expression of their views on the important questions therein discussed.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue.
" Hon. Justice Muthusami Aiyar, C.I.E.
" " A. Seshayya Shastri, C.I.E.
" " V. Ramayyangar, C.S.I.
" M. R. Ry. P. Chentsal Row Pantulu Garu.
" " P. Srinivasa Row Garu.
" " G. Muthusami Chetti Garu.

READ—also the following letter from P. CHENTSAL RAO, Head Sheristadar, Board of Revenue, to the Secretary to Government, Revenue Department, dated Mylapur, 27th April 1881:—

I have the honor to acknowledge receipt of the G.O., dated 18th March 1881, No. 475.

2. The points on which I am asked to give my opinion are, I believe, the following:—

1*st*.—Whether it is desirable to discourage or even forbid the practice of a tenant with occupancy rights subletting his land, and if they are permitted to sublet their lands, whether measures should not be taken for recognizing the status of such sub-tenants, and recording the area they hold, the rents they pay, and the conditions of their tenure.

2*ndly*.—Whether it is possible and desirable to improve the position of the tenants-at-will, by providing them with some means by which they might without injury to the landlords secure occupancy right in the lands they hold, and if so, what is the best means to be adopted for attaining the object in view.

3*rdly*.—Whether fresh legislation is not necessary to set the rights of tenants of Zemindars and Inamdars on a firmer footing than they now are, by providing that all tenancies should, *primâ facie*, carry a right of occupancy, the onus of the non-occupancy tenure being left to the landlord.

4*thly*.—Is it not essential that all Inam and Zemindari villages should be surveyed, village accounts kept, and statistical returns needed for Government, furnished, and if so, what measures should be adopted?

3. *First*—I do not think that it is desirable to prevent or even discourage subletting. To stop subletting would be stopping progress. Men desire not only wealth, but also ease, pleasure, social position and power, and they wish to get wealth with the least possible trouble, exertion and sacrifice, so that, when a tenant who has occupancy rights acquires sufficient wealth, the first thing he desires to secure is ease and pleasure. He would be glad to have £100 a year without toil by subletting his land to another rather than £200 by working on the land himself, provided the £100 are sufficient to maintain him decently. Is it proper to curb this natural desire? Is it just? And is it advantageous to society? I should say it is palpably unjust to prevent a man from doing what he likes with his property, and no amount of reasoning in the world will ever convince people who are told to relinquish a source of income guaranteed by custom that the deprivation of their rights is just; but I would go so far as to say that if the measure be really advantageous to the society at large, it may be introduced, since husbandry is a public benefit and contributes to the increase and plenty of provisions, but I do not think that such a measure would be in any way advantageous to society. Before I show that it would not be advantageous, I think it necessary that I should briefly state the several conditions on which lands are usually sublet in this Presidency. Lands are sublet (1) for a fixed share in the produce, all the expenses of cultivation being borne by the under-tenant; (2) for a fixed quantity of produce or sum of money payable to the landlord, the expenses of cultivation being borne by the under-tenant; and (3) for a fixed share in the produce, the agricultural stock being supplied by the landlord. As a rule, the under-tenant does not undertake to pay Government assessment due on the land, it being paid by the ryot having the occupancy right, and the cost of improvements is also borne by the latter. Thus the under-tenant is not responsible to Government for the assessment and is not under the necessity of raising capital to improve the land, but has every interest to cultivate the land well, as thereby he increases his own gains. It is true that if he had a more permanent interest in the land he would cultivate it better, but he may not be able to provide himself with the agricultural stock, to raise capital for improvements, and may not also be able to pay assessment to Government which often becomes payable before crops come to hand, and which in some years happens to be in excess of the income. There will always be a certain class of persons of this description who could and would cultivate lands with advantage as sub-tenants, but who could not do so as independent cultivators and I do not think it is at all desirable to discourage that class. An ordinary laborer can never all at once become a tenant with occupancy rights. The position of a tenant-at-will is the intermediate stage between a laborer in the field and a tenant with occupancy rights, and to do anything to discourage this intermediate class would be to discourage progress and social advancement. Another view of the matter is, if a tenant with occupancy rights knows that the moment he ceases to be a *bonâ fide* cultivator his occupancy rights would terminate, he would not cease to be a *bonâ fide* cultivator and thus deprive himself of his rights. Instead of having tenants with a fixed share in the produce as an inducement to cultivate the land well, he would have hired servants under such supervision as would constitute him a *bonâ fide* cultivator, and the consequence would be more indifferent cultivation and less produce to the country. Therefore, whether the question is looked at from an economical or social point of view or as a mere question of justice, it is clear that it is not desirable to deprive tenants of their power to sublet their lands at their pleasure. I may also mention here that the number of cases in which lands are sublet in this Presidency is exceedingly small, and cannot be even as much as 1 per cent. of the number of tenants with occupancy rights. There is, however, no objection to recording the area of lands held by such tenants, the rents they pay, and the conditions of the tenures.

4. With reference to the second point, nobody can deny the desirability of improving the condition of tenants-at-will. The interest of landlord is certainly not always a sufficient security to the public for the good management of land, and tenants cannot be made to trust entirely in the generosity of the landlord, and their interests made dependent on their good feeling and forbearance. But the best way of securing the object in view is not by compelling the landowners to sell their rights to tenants as suggested by the Famine Commissioners, a measure which even if possible and just would be highly unpopular, but by securing to tenants their own property in their own improvements. I think that if the tenant has added anything to the value of the land beyond the duration of his tenancy, the landlord should be made to purchase the improvements at its full value though the terms of the tenancies might be to the contrary. A law in the above direction will lead to the much desired and fearless investment of capital in land, and can in no way injure any party. The only possible objection to this is, that it will virtually give to rich tenants the power of acquiring the occupancy right of the land, as there are lots of cases where landlords are poor and unable to pay for the improvements; but since the Courts will award a fair rental and the landlord will have the lands back when the improvements are exhausted or he is able to pay for them, no real hardship can accrue to any party while the land benefits and the people with it. The details of this measure require great consideration, but I need not enter into them here. It is sufficient to mention that such a system exists in England and it is possible to work the details in a suitable manner. I doubt the possibility of making the tenants buy the freehold tenure even if it were just to do so. Of course every tenant, whatever be the duration of his tenancy, cannot be allowed to buy the freehold, and if a limit of time is placed, the landlord will see that the limit is not attained. The result will be frequent changes of tenancy and the consequent deterioration of the land.

5. As regards the third point, *i.e.*, tenants of Zemindars and Inamdars, the necessity of legislative action is undoubtedly urgent. At present the Zemindari tenants have hardly any security of tenure. Their rents are high, they are forbidden from making improvements on their land without the permission of the Zemindars, money is wrung out of them to the last penny and they are annoyed in every possible way, and their existence has become tolerable only by their ability to cheat the Zemindars in their turn by concealment of cultivation and bribing the subordinates entrusted with the administration. I think that the defect of the existing law is not merely in that, the onus of proving the right of ownership is thrown on tenants instead of on Zemindars, but also in not defining the rights of Zemindars as such in regard to the soil. A Zemindar may, of course, claim right in the soil in the capacity of a private individual, he having purchased it, or cleared a forest or acquired by some other legal means; but the point must be set at rest whether a Zemindar can, as a Zemindar, ever claim right in the soil on the mere ground that he exercised such rights as Zemindar both before and after the permanent settlement. As the law now stands, or at least as it is now interpreted, it does not decide one way or the other, and the Courts are left to decide each case on its merits. The opinions of judges vary so often, clear proof in a matter like this is so difficult, the ryots are so poor, a law suit is so expensive, and the Zemindar so rich and powerful, that the ryots are practically unprotected, and I think that it must be clearly laid down that a Zemindar cannot, as a Zemindar, claim any right in the soil, and that his right is merely confined to the realization of the Government share of the produce whatever it may be, he being of course competent to make such arrangements as may be necesary for securing his share of the produce; in other words, he being competent to arrange for the land being brought under cultivation at an early date. But when once the land is cultivated and a tenancy established, he should have no power to eject the tenant unless he refuses to pay the proper rent or assessment due to the Zemindar. This is exactly what the Government do in regard to the lands under their own management, and I do not think that there will be any difference of opinion in regard to the propriety or advisability of such a ruling in the interests of the country. The only question is,

whether such a regulation involves any breach of faith with the Zemindars. I certainly think not. The payments of the tenants were never regulated by Zemindars by competition, or a separate bargain made with each ryot, but the rents have always been settled with reference to some custom or rule, thus recognizing the occupancy rights of tenants. There may be cases in which the Zemindars did turn out occupants when they did not pay the sums demanded whether they were reasonable or not; but such cases are exremely rare, were never recognized by Government, and no legitimate inference can be drawn from them. Moreover the permanent settlement regulations recognize no such right in the Zemindar. On the contrary they lay down that Zemindars "shall enter into engagements with their ryots for a rent either in money or kind,"

Section 14, Regulation XXV of 1802.

that "where disputes arise respecting rates of assessment in money or division in kind, the rates shall be determined according to the rates prevailing in the cultivated lands in the year preceding the assessment of the permanent Jamma on such lands, or where those rates may not be ascertainable according to the rates established for lands of the same description and quality, as those respecting which disputes* may rise." The regulations do not give any power to Zemindars to eject tenants on the ground that they do not give the rates demanded of them, but, on the contrary, the case in which Zemindars can eject their tenants is specifically mentoned. It is only "where under-farmers or ryots may refuse to exchange mutual engagements in writing with proprietors or farmers of land" that "such proprietors or farmers have power to grant lands of the under-farmers or ryots so refusing to other persons." It is contended by some, and indeed the view taken by the High Court is, that the latter section is applicable to cases in which ryots posses occupancy rights, but not to all tenants; but none of the regulations draw any distinction between ryots with occupancy rights and those with no such rights. The permanent settlement regulations everywhere speak of only two classes of person having interest in the land, *i.e.*, Zemindars and tenants; and it is enacted that tenants should not be ejected except when they refuse to pay a proper rent, and it is certainly beyond my power to comprehend how the regulations could be reasonbly construed in the manner they have been. It must also be remembered that rights of occupancy are not, as a rule, rights conferred by any act of State, but come into existence and grow with the advancement of the country. Rights of soil were unknown in former times when husbandry was rude and land available in plentitude. The year's crops represented the return to which the ryot was entitled for his industry and he did not care whether he possessed occupancy right in the soil or not, since if he was dispossessed of his land in one place he could cultivate in another locality; but times are now changing. Land has become scarce and it has become necessary to import skill and capital into agriculture, and cultivation therefore requires greater protection than it did when labor and seed were the chief investments in the soil, and I think there is nothing in the permanent settlement which should prevent the legislature from giving to the tenantry that protection of their growing rights which the conditions of society require. I would therefore unhesitatingly enact that Zemindars, as Zemindars, have no right in the soil, and if they wan to establish right of occupancy, they can only do so by proving that they have acquired it in their capacity of private individuals. In other words, no Zemindar should be alowed to plead in a Court of Law that he always, as a Zemindar, exercised rights of occupancy and that therefore the ryots are tenants-at-will; but he must prove that he, or the person through whom he claims, acquired the right by purchase, gift or bequest or by investment of capital. If the ryot's right in the soil is once recognized, I think it follows that the improvements of the ryots on the land ought not to be taxed. I would not, however, give retrospective effect to this rule, as the measures would be highly detrimental to the revenues of the Zemindars and consequently distasteful to them; but there is no injustice whatever in declaring that the Zemindar should not *in future* be permitted to tax ryot's improvements on the land. If a ryot digs a well in his land and thus increases his produce, the Zemindar should not be allowed to share in the

* Section 9, Regulation XXX of 1802.

Section 10, Regulation XXX of 1802.

increased produce, and the law must be definite on the subject. I know that in some Zemindaris ryots are actually prevented from digging wells in their lands without the permission of the Zemindar, which is not granted unless the lion's share of the profit is promised to the Zemindrs. There are also several minor points with reference to the Rent Recovery Act VIII of 1865, which require consideration.

Section 41, Act VIII of 1865.

For instance, it is altogether a question whether the Zemindar should have the power of ejecting a tenant at all when arrear is not paid, and whether the interest of the tenant, whatever it may be, cannot always be sold; but such minor points can be considered when the Act is revised. The main point is whether Zemindari ryots should be declared or not as possessing occupancy rights in the same way as Government ryots are. If, however, the Zemindari tenants cannot be broadly declared to possess rights of occupancy, the next best thing is to institute a special enquiry by means of a Commission, and settle once for all who have occupancy rights and who have not. A clear regiser showing the ryots with or without occupancy rights in Zemindaris will be of immense value to the country and conducive to the improvement of property

6. The above remarks apply more or less to the tenants of Inamdars also, with the difference that unlike Zemindars, Inamdars often occupy the double position of Government and tenant. They represent Government, because they are entitled to the assessment payable to Government, and it is not unfrequently that they have also occupancy right either because they were actual tenants before the land was made Inam, or because the rights of tenants have been purchased or otherwise acquired by them or by those who granted the Inam. Of course, there are cases in which the Inamdar has no title whatever to the land, and the only way of improving matters in regard to the tenans of Inamdars is by holding an enquiry and registering once for all the names of the real proprietors of the land.

7. With reference to the last point on which I am to give my opinion, I do not think the question admits of a difference of opinion. Certainly Government should have the means of obtaining statistcs from all parts of the country within their dominion, and the present system of keeping accounts in Zemindari villages is anything but satisfactory. There is an office of Kurnam in each Zemindari village, whose duty it is to keep accounts, but he is not paid in any uniform scale. He gets too much in some places and too little in others, and neither Government nor Zemindar has any power to interfere with the scale of the fees he gets. He is responsible to the Zemindar and to Government, but neither has power to remove or suspend him and he can only be dismised by a Civil Court after the tedious process of a regular suit. I think that much good will not result by placing the Kurnam under the control of the Collector, as his services are chiefly due to the Zemindar; but the results will, I believe, be satisfactory if the Zemindars are made responsible for furnishing any statistics concerning their estates which Government may require, he dealing with his establishment in the best manner he likes. It is but right that each landholder shoull furnish to the State such information in regard to his estate as may be necessary for public benefit, and the system of Government appointing their own servant for furnishing information in regard to the estates of private individuals appears to me to be altogether faulty.

READ—the following Proceedings of the Board of Revenue, dated 26th September 1881, No. 2122:—

Read—again the following Proceedings of the Board Revenue, dated 13th April 1881, Mis. No. 3955.

Read—the following G.O., dated 18th March 1881, No. 475, Revenue.

* * * * *

Resolution—dated 13th April 1881, Mis.No. 3955.

Messrs. Foster Webster, J. F. Price, and H. E. Stokes, and Mr. Macartney, Agent to the Rajah of Sandúr.

COMMUNICATED to the gentlemen noted in the margin, who are requested to favor the Board with their remarks upon the subject.

(True Extract.)

(Signed) E. GIBSON,
Acting Secretary.

Read—also the following letter from H. E. STOKES, Esq., Acting Collector of Salem, to the Secretary to the Board of Revenue, dated Atúr, 18th May 1881, No. 1291 :—

I HAVE the honor to reply to Board's Proceedings, No. 3955, dated 13th April 1881, calling for report on proposals of the Famine Commission for restricting subletting and abolishing occupancy rights held by others than actual cultivators, and for the amendment of the rent law.

2. I am of opinion that the proposals on the first subject are inexpedient and impracticable, and could only be justified by proof of widespread rack-renting of land and systematic oppression of the cultivating classes, of which however proof is, in my opinion, wanting.

3. The wet lands and the more fertile and improved dry lands are largely held on putta by persons belonging to the non-cultivating classes, who are frequently non-resident in the villages where they hold the lands. The holders are usually Brahmins and Chetties in the towns. The possession of land is sought as an investment of a secure kind, and the rate of interest expected on the principal sunk is very low. I am informed that the holders are well content with 4 or 5 annas per mensem on each hundred rupees, *i.e.*, about 3 or $3\frac{3}{4}$ per cent. per annum. The actual cultivators usually get leases running for four or five years, and when there are no leases, they work on the sharing system, the most usual agreement being "Arthakandáyam," under which the Puttadar takes half the gross produce in grain and pays the Government demand. When the latter is paid by the cultivator, the landholder's share is usually one-fourth, sometimes less, seldom more. The straw always goes to the cultivator. Good tenants under either system are rarely disturbed; they are too valuable to the landlord, who frequently helps them in purchase of cattle or the like.

4. I think it is too hastily assumed that this system is new, and the result of British rule and the operations of the Courts. I believe that such arrangements have always been part of the "ancient custom" of the country, and I should like to see some proof of the assertion that they have even extended under British rule. It is possible that too hasty generalization has been made from the known course of proceedings between money-lenders and the thriftless class of larger proprietors for the most part created at the permanent settlement.

5. To cancel all these arrangements and under-tenures by a stroke of the pen would revolutionize native society and amount to wholesale confiscation; while the existence of no evil, of which they are shown to be the cause, is proved, and it is doubtful whether the ends in view, viz., improvement of agriculture, and a more assured position to the ryot which would prevent him becoming a burden to the State in time of famine, would be attained.

6. It is not clear whether the proposal that the tenants shall compensate the landlord for the loss of his occupancy right, which the Commission make in paragraph 32 of the extract, would be applied to the cases of sub-letting by occupancy tenants above described. I suppose they would not propose that the holdings should be cancelled without compensation, nor that the State should find the money; and therefore the compensation must be paid by the cultivators under some system such as suggested in the paragraph quoted. If so, it is certain that for many years to come any surplus which the ryot could secure would be absorbed in making these

payments, and the fund for the improvement of the land would thus be decreased. These petty landlords are now, partly owing to the settled and secure character of the investment and partly from sentimental preference for it, content with a low rate of interest; and if they are peremptorily ejected, their interest must in fairness be capitalized at a very much higher rate than they now obtain. Also the fact that they must receive back their capital in driblets and not in a lump sum must be allowed for. Probably the rate of interest to be taken could not be less than 15 per cent., and the cultivating ryot would find the annual payments, over whatever period they were spread, a very heavy burden. In fact, the proposal amounts to this that the cultivators should be compelled to purchase their holdings, and to be started on their career of improvement and amassing of capital with a load of debt about their necks. The cultivator's savings for a generation would probably go to this object and not to the improvement of his land. He would be for years impoverished, not enriched.

7. The abolition of the petty landlords under discussion would lead to diminution of agricultual capital in another way. These people are all engaged in trade or other occupations, and their savings gravitate towards agricultural investment. They would be prevented from applying funds to agricultural improvement under the new proposals. There is a further and by no means unimportant consideration, viz., that these people represent the brains of the agricultural mass, and that it is through them that improvement of lands or of native methods is most likely to be realized.

8. Even supposing the saving, represented by the landlord's right, to go direct into the ryots' pocket, the holdings are too small ever to enable them to hold such a surplus as to be able to pass through a real famine without coming on the hands of Government. The change would be too infinitesimal to make any difference in this respect.

9. As to the practicability of the scheme, I would ask what is a *bonâ fide* cultivator? There are infinite degrees of intimacy in connection with the land, from the man who himself holds the plough to the man who resides at a distance, never sees the land, and merely receives his rentcharge from his sub-tenant. Where is the line to be drawn? Who is to institute the interminable inquiries which will be necessary to settle the position of every registered landholder in the first instance, and who is to maintain the constant supervision which will be required to see that each cultivator retains his status as an occupancy tenant? It is futile to hope that the cultivators themselves will do the work by coming into the Rent Courts to enforce their claims. Their position is consecrated by custom and time, and they will not take the initiative in an attempt to change it. Even if the whole body of rent chargers are expropriated and abolished, a fresh body will be formed in course of time, and legal ingenuity will be baffled in attempts to prevent it.

10. So far I have been writing with reference to sub-letting by occupancy tenants, meaning thereby registered Puttadars in Government land, and holders of puttas under Mittadars. The occupancy rights of the latter are not questioned in this district, and the ruling of the High Court that the law does not recognize any such rights is not known. The right was expressly conceded in the early Ryotwar settlements which preceded the formation of the mittas, and it is recognized as attaching to all putta tenures since created in permanently-settled estates. It is equally clearly understood that there is no such right in the Jodigai Agraharam or whole Inam villages; the ryots of Trishven Agraharams are of course in the same position as ryots in ordinary Government villages. With reference to paragraph 40 I would observe that there is not the slightest doubt that in the settlement it was contemplated that Government ryots should deal with their lands as they pleased.

11. I fully agree as to the necessity of a revision of Act VIII of 1865, both with a view to make clear the position and rights of occupancy tenants, and to correct the confusion and uncertainty which pervade the Act and make it so difficult to work. But in the last sentence of paragraph 42, the Commission seem to think that occupancy right forbids disturbance in any event, whereas non-payment of rent is recognized as a sufficient reason for ejection.

12. I do not of course question he desirability in the abstract of giving security of position to the actual cultivtors; but I am of opinion that proof is wanting of the existence in Madras distrts of evils resulting from the present state of things, and of sufficient magnitude to ustify the serious interference with rights of property and freedom of contract an the tutelage of the cultivating classes, which are involved in the proposals of th Commission. I believe further that the measures suggested would fail to produo the effect desired.

Read—also the following letter from J. MACARTNEY, Esq., Agent to the Rajah of Sandúr, to the Secretary to he Board of Revenue, dated Sandúr, 16th July 1881, No. 62 :—

With reference to the Proceedings f the Board, No. 3,955, dated 13th April 1881, I have delayed my reply, not fro any want of interest in the subject, nor from any deficient sense of its importanc, but solely from a feeling of incompetence to discuss, with even a moderate degree of satisfaction to myself, a question of such intricacy and importance. Not having before me, *in extenso*, the report of the Famine Commission, I can only remark n such of the extracts furnished as touch upon matters with which I may have ha more or less experience.

2. The evils arising from the sub-letting of land and living on the difference between the rack-rent and the privileged rate secured to the *tenant* by the law are such as doubtless call for redress. The practice involves a fraud on the community, which, in securing to the tenant permi nt rights, the legislature could never have contemplated sanctioning. At first v I was strongly inclined to deprecate any measure which would seem to violat security of tenure, by probably allowing Government officials to step in and estion the tenant's right to hold on by his ancestral land so long as he continued gularly and punctually to pay the Govern- ment demand. It seemed to me tha a tenant who had fallen into dilapidated circumstances might be compelled to let out his land and to follow some other occupation for a time, but yet with the hope of being able subsequently to resume the cultivation of his paternal acres, and that a legislative measure which would effectively prevent the sub-letting of lans at more than the Government rate would meet the difficulty. But on further consideration it was obvious that the evil would only be partially met so long as the *bonafide* cultivator had no right of permanent occupancy, and that some limits should e assigned to such an unsatisfactory state of things. Granting that the actual cultivator, even at the rack-rent, which he pays, can manage to earn a bare livelihood, he would doubtless be relieved in a measure by a reduction in his rent, yet the nsecrity of his tenure must ever operate so as to debar him from that improvement of he land which is essential to the agricul- tural prosperity of the country. Withou, therefore, positively prohibiting a tenant from sub-letting, he might justly, I thin, so far be discouraged from doing so, by the rendering illegal of any agreement between him and the actual cultivator, which imposes on the latter a rent exceeding the Government rate, and in way of penalty by making him liable to a fine of louble such excess. After a limited period considerately fixed, if the Government nant is still unable to resume the cultiva- tion of his land, in the interests of the community at large, his right of permanent occupancy, the benefits of which he confssedly cannot avail himself of, might fairly be transferred to the *bonâ fide* cultivatr. On this supposition the Government tenant would be no loser in a pecuniary oint of view, as he would have degenerated to the mere position of a *medium* throug which the rent of the land reaches the Government Treasury, while, by continuing to hold on, he deprives the cultivator of the legitimate fruits of his industry and enterprise, and the community of the benefits which might accrue to it from superior style of husbandry.

3. For the improvement of the ryots' position, I am disposed to regard the diffusion of education among them as of the highest importance. The recent in- creased efforts of the Government in this irection, by the supervision and encourage- ment of primary schools, may reasonabl be expected to lead to the most beneficial results. The ordinary ryot can neither read nor write and he is, of course, utterly

ignorant of figures and their value. As he is always impecunious, he his ever borrowing, and is seldom, if ever, out of debt. He is readily induced to agree to a rate of interest which, if he understood he simplest operations of arithmetic, he would see to be simply ruinous. He is wholly dependent on his Soucar for all knowledge as to how he stands, and, not being able to question anything, is easily led to sign bonds for sums involving item of heavy interest, and bearing equally burdensome interest for the future. Thus his crops often are mortgaged in advance and he continues to live and cultivato on ocasional advances from his creditor, and thus all the profits of his labor are absorbed by the latter, while he himself can never attain a position of independence nd comfort. Until at least he is better educated, the law might help him in hi struggle with rapacious creditors, by enacting that all consolidated bonds in gricultural districts should specify the several items of which they are composed In case of litigation, such a provision would be some check on unscrupulous money-lenders, while it would enable the Court to determine whether the accrued interest was legitimate and did not exceed the aggregate principal. It is also open to question whether the law as administered is not too expensive in its processes. It s true that the Government cannot afford to administer justice at a loss to itself, bu it is equally obvious that it ought not, to any considerable extent, gain thereby. I appears to me to be worthy of considera- tion whether the heavier expenses of litigation in country districts might not often be avoided were Judicial Officers authorized, with the consent of the parties, to act as umpires between them. The ryot seldm questions his liability to fulfil the con- ditions of his bond, and an arrangement mght often be come to in the first stage of litigation if the inflexibility of the law did not present a hindrance.

4. Another consideration may be mentioned, which, though it bears only directly on the position of the ryots, ma be regarded as of some importance. I refer to the increasing want of sympathy between them and their immediate rulers. In former times it was the practice for Revenue Officers to be appointed to districts where they were allowed to remain for a ong time, and where some of them gradu- ally rose to the highest positions in the service. Mr. Pelly may be cited as an instance in this district. They thus acquired in the course of their service a special knowledge of the district, the people, the language, their wants, and their general condition. They naturally took a deeper interest in, and were much more accessible to, them, and came often to be regarded as their friends. The frequent and sweeping changes which are now made in the administrative staff of districts have strongly tended to subvert this desirab state of things.

5. The tenant-at-will system is unquestionably a serious evil, and most hurtful to agricultural prosperity, and I am strongly inclined to the opinion that some such measure as is proposed by the Famine Commissioners might do some- thing towards remedying it. I can scarcely hope that it would completely meet the case, for, although the law were to offer such facilities for the acquisition of security of tenure, it would still remain to be seen whether the cultivators generally would avail themselves of its provisions. It may, however, reasonably be presumed that a large proportion of the best and most thrifty ryots would gladly do so. The danger, as it seems to me, would lie in over-estimating rather than in under- estimating the amount which the landlord really gains by his tenant not having occupancy rights. It is quite clear that system tends to impoverish the land and deteriorate its value; in fact to keep it a *minimum* of productiveness. Now when bad seasons come, the tenant, already sufficiently weighted, probably finds himself unable to cultivate, gives in his razinamah, and retires from the struggle. The land is either for a time thrown out of cultivation, or is again rented in the most unfavorable circumstances for the landlord. It may therefore be assumed that it would be for the interest of the latter in the long run to fix an equitable rent and give the ryot that security which can alone ensure to him the fruits of his labor and expenditure.

6. Not having any practical knowledge of the working of the law as men- tioned in paragraphs 41 and 42, I would rather decline to remark on the subject.

Read—also the following letter from J. . PRICE, Esq., Collector of the Chingleput District, to the Secretary t the Board of Revenue, dated Saidápet, 16th July 1881, No. 273 :—

I have the honor to reply to the Proceedings of the Board of Revenue, Miscellaneous No. 3955, dated 13th April last, nd to express may regret that, owing to my having been on leave and to my time having since my return been fully occupied with other matters, I have been unable to do so at an earlier date.

2. I do not quite comprehend upon what precise points an expression of one's views is sought. The drift of the remar s of the Famine Commission is, I take it, that it would be desirable to give all actal cultivators of the soil, who are sub-tenants and occupiers, some permanent rights of occupancy in order to enable them to meet times of distress, thus improving their status, to put down ack-renting, and to place Curnams of settled estates in such a position that they would have to render accounts to Government whenever required.

3. It would, no doubt, be highly desirable if something of the kind suggested as regards sub-tenants and occupiers coul be done, but any decided move towards such an improvement would be met by covert opposition and intrigue to an extent which, I feel assured, would be far greater and more prolonged than would seem to be anticipated.

4. Madras Act VIII of 1865 is an enactment which is supposed to guard the rights and to protect the interests of tenants and sub-tenants, having due consideration, at the same time, for those of landlords. My Sub-Collector, Mr. Farmer, is drawing up a paper in which it is proposed to bring forward some of the iniquities which can be perpetrated under this Act and to show what intrigue and misrepresentation on the part of persons connected with the landed interest in this very district took place when the Bill of Act VIII of 1865 was under consideration. This I shall submit in due course for perusal.

5. The whole Act requires careful revision and alteration. Whatever may be *implied* by it—the ablest Civilian Judge, who has ever sat upon the Bench of the High Court of this Presidency, once remarked to me that it was the most difficult Act in the Statute book to comprehend—is practically in favor of the landlord and against the tenant, and the former has, as far as I can see, not been slow to perceive his advantage and to avail himself of it. It is the weak who should be protected against the strong ! it is the strong who are enabled by the law, ostensibly designed in the favor of the weak, to op . In this assertion I believe that I should be borne out by the experience o every officer who has ever had any practical acquaintance with the Act.

6. It would be a very difficult task indeed, desirable though it might be, to give effect to the suggestions of the Famine Commission in regard to occupancy tenants. This class of persons is, as a rule, poor; they live from hand-to-mouth and are liable to be at any time turned out without a penny of compensation for improvements made. They are very frequently ground to the dust by the landlords, who make them pay for the actual tenants by seizing their crops, &c., in satisfaction of arrears of rent, and they, generally speaking, are so impoverished that they cannot afford to fight their cases in the Revenue Courts and those to which the judgment of a Collector can be taken on appeal.

7. A step towards improvement of their condition would be effected if it was made illegal to attach crops, &c., unless it could be shown that they were grown by, or the actual property of, the registered tenants. Much good might also be done by removing entirely from the scope of Act VIII of 1865 all cases involving sub-leases, or sub-tenancies, and declaring that rents due under such contracts would be recovered only by suits in a Civil Court. This would apply equally to lands held under a Government putta or in a settled estate.

8. I consider the petty zemindaris, nuttahs, shrotriems, and inam villages, with which the country is strewn, one of its greatest curses from an agricultural point of view. I add to these in this district the mirassi system, which has for

years been a bar to improvement. The mode of collecting the arrears of revenue due by the owners of the properties mentioned above is cumbrous and lengthy, whilst on the other hand the powers which the law gives them to screw their tenants and harass and worry sub-tenants are very considerable.

9. If all rents in kind were abolished and a money-rate insisted upon in all settled estates, &c., another very fruitful source of tyranny on the part of landlords and of suits in Revenue Courts would disappear. This would require a survey and settlement, but I do not see why Government should not, except in the large and ancient zemindaris which are hardly in the nature of tenancies, enact that this should be done, and that all charges for second crop, irrigation of dry lands from tanks belonging to proprietors, &c., should be the same as in Government lands. Certainly one half, if not more, of the suits which come into Revenue Courts arise from there being no fixed money assessment, and it is not by any means an infrequent occurrence for landlords to drag tenants and sub-tenants into the Criminal Courts on the ground that they fraudulently carried off a portion of the crops to which they were not entitled.

10. As regards the question of Curnams, it appears to me most absurd that an individual, who is practically a private employer, cannot, though he can appoint a servant of this class, get rid of him except by a Civil Suit. I think that the nomination to the office of Curnam in settled estates should lie with Zemindars, but that in the interests of the State, the power of appointment and dismissal should lie with Collector of the district, who should have authority to compel such Curnams to, whenever called upon to do so, submit such statements, returns, and accounts as Government may, from time to time, direct.

11. As regards the remarks made in paragraph 40 of the Commission's observations, I would advance that the Land Revenue Settlement could hardly have contemplated that ryots were not to sub-let. If this had been the case, Clause 3, Section 1, Act VIII of 1865, would have been uncalled for. I do not see what advantage could be attained by the suggesions made in the concluding portion of the paragraph quoted above. The present arrangements would only reappear under a different form, the sub-tenants being called the servants of the tenant, instead of what they now are.

12. The subject of allowing long possession as a sub-tenant, or certain other circumstances, to give an actual right of occupation, is one which, unless Government wish to raise a nest of hornets about their ears, must be entered upon with considerable caution. I think that, for the present, it would be enough to curtail the powers which landholders have under Act VIII of 1865; to force all tenants sub-letting to recover their dues in a Civil Court only; to protect, and that very closely, the poperty of sub-tenants from attachment and sale on account of rent due by the registered tenant's; to abolish all rents in kind and compel the introduction of a survey and money-rates in all shrotriem, inam villages and permanently-settled estates, not being ancient zemindaris; and to bring all Curnams in zemindaris, &c., under the control of the Collector.

13. To carry out these measures, if deemed feasible and desirable, would probably take some time and would pave the way for, at some future period, legislating upon the question of occupancy rights. It was found that the alterations in the Act, &c., suggested did not render the position of cultivating sub-tenants sufficiently secure.

Resolution—dated 26th September 1881, No. 2122.

By the order contained in the Board's Proceedings quoted above the Government refer for an expression of the views of the Board certain extracts from the report of the Famine Commission relating to the position of cultivating tenants in the Madras Presidency. These extracts embody the opinions of the Commissioners upon the questions of the sub-letting of land for cultivation and the position of tenants in relation to their landlords.

2. Regarding the question of sub-letting the Commissioners, having stated that the occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator, proceed to discuss the means by which, in their opinion, it might be possible and desirable to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights; and they recommend that the practice of sub-letting by an occupancy tenant should be discouraged or even forbidden; and further that, when such right is posessed by a tenant, it should be forfeited by his ceasing to be a *bonâ fide* cultivator and pass to the person who, as his sub-tenant, occupies his place.

Paragraph 31.

3. Upon these recommendations the Board observe that whereas their object is to prevent rack-renting by middle-men and the oppression of the cultivator, it has not been proved that the evil which it is desired to remove exists in this Presidency to such an extent as to justify a measure confiscatory in character, and which, if it were possible to carry it out, would involve the complete subversion of established rights and customs relative to property in land. Nor is it apparent how the remedy proposed would have the effect of materially improving the cultivator's position; for, if it prevented him from having recourse to the money-lender in time of need, the benefit would be by no means unmixed either to himself or to the community; unable to borrow he would be unable to till and loss would be the result to both. The Commissioners seem to be somewhat uncertain whether their proposal will be found practicable, and the Board have no hesitation in stating that it would be quite impossible to put it into practice. Throughout the world, it is in the natural order of society that some men possess capital and some do not; the former become owners of the land and the latter rent it from them or work on it for hire. Such an enactment as that proposed would only cause a temporary disturbance of existing relationships, which in process of time would revert to their original state.

4. In the next paragraph the Commissioners make suggestions for securing to tenants-at-will occupancy rights in the lands which they hold without injury to the landlords. Unless the word injury is here used in a restricted sense, it is difficult to conceive how this proposal is feasible. The Commissioners, however, explain how they would propose to carry out the measure, viz., by making the tenant pay an enhanced rental, the increase being calculated with reference to "the annual amount which a landlord gains by his tenant not possessing occupancy rights." The Board believe it would generally be found impossible to frame an estimate in the manner described, and even if it were possible to do so, the advantage to the tenant would be doubtful. Upon this point attention is invited to the remarks of the Collector of Salem with which the Board entirely concur.

Paragraph 32.

5. Turning to the first paragraph* of the second extract, it is hardly necessary to say that power† to sub-let is the undoubted right of every holder of land under a ryotwari putta. This right and that of transfer by sale are essential privileges of the holders of land under the ryotwari system which should on no account be interfered with. As regards the proposal that sub-tenants should be recognized and the area, &c., of the holdings recorded in the accounts kept by Government, the Board consider that such a measure is neither necessary nor expedient. Such registration would not affect the status of a sub-tenant, while it would throw upon the Revenue establishments, already over-worked, an enormous amount of additional labor.

* Paragraph 40.

† Board's Proceedings, dated 22nd March 188, No. 473 (G.O., 11th May 1881, No. 740).

6. The remaining paragraphs‡ requiring notice bear upon the relation of Zemindars and Inamdars to their tenants. The amendment of the Rent Recovery Act (VIII of 1865, Madras) has been proposed on former occasions, and the Board are of opinion that the revision of that enactment should be no longer delayed. The object to be kept in view should be to define existing rights as established

‡ Paragraphs 41, 42, and 43.

by customary usage and make provision for their enforcement, and not to create by statue new relationships between landlord and tenant. In connection with this part of the subject the Board would refer their Proceedings§ noted in the margin and repeat the recommendation made at paragraph 8 thereof.

§7th March 1879, No. 618.

(True Copies and Extract.)

(Signed) E. GIBSON,
Acting Secretary.

To the Secretary to Government, Revenue Department.
Copy to all Collectors.

Minutes by the Honorable W. HUDLESTON, dated 17th March and 19th October 1881.

Minutes by the Honorable D. F. CAMPBELL, dated 3rd April and 14th October 1881.

ORDER—dated 29th April 1882, No. 437, Revenue.

Land Revenue, No. 24.

In the first of the papers read above, the Government called upon the Board of Revenue to enquire and report whether the results anticipated by them, as affecting the fixity of tenure of the Zamindári ryots, from the judgment of the High Court in Special Appeal No. 9 of 1870,* had ensued and to what extent, and the second paper is their reply. The third embodies a letter from the Government of India asking for the opinion of this Government on certain suggestions made by the late Famine Commission for improving the position of tenants in this Presidency. The next following papers are the only replies yet received to the order of this Government inviting marks on the suggestions last referred to.

* Volume VI, Madras High Court Reports, pages 161—171.

2. The Famine Commission, in the extracts from their report printed in the G.O. of 18th March 1881, refer particularly to the custom of sub-letting by holders of occupancy rights, which they consider to be attended with ill-consequences, and suggest that it should be discouraged, or even, if possible, forbidden.† They also, adverting to the High Court's judgment above referred to, point out the expediency of legislation in view to the protection of the occupancy rights of the Zamindári ryot.‡

† Paras. 31 and 32.

‡ Paras. 41—43.

3. The far more momentous question last indicated will be noticed first. Whatever may be the precise scope and effect of the High Court's ruling, there seems to be no longer any room for doubt that it has been judicially interpreted, though yet within a limited area §, as declaring the tenure of a Zamindári ryot terminable at the will of the Zamindár at the end of the year, and has had the effect, over a more extended area, of enabling the Zamindárs to impose arbitrary terms and levy enhanced rents from the ryots. It is clear, therefore, that Madras Act VIII of 1865 has failed to assure to ryots holding under assignees of the public revenue that permanency of tenure, as

§ In Vizagapatam generally and in one case in Nellore—*vide* Collector's letters recorded in Board's Proceedings, dated 7th March 1879, No. 618

Section 12.

well as security against exaction and oression, which that enactment, as likewise the Regulations of 1802 * and 1822 † which it consolidated, contemplated and intended to assure to them.

* XXX Section 12.
† IV and V, Section 8.

4. The position, having regard the magnitude of the interests involved, is fraught with anxiety, and the Right Honorable the Governor in Council is satisfied, that remedial measures cannot be sfy deferred any longer. He accordingly resolves to appoint a Committee, composed of the gentlemen named in the margin, to draft a Bill calculated to remove all doubt as to the conditions of a Ryot's tenure of land. The Government would be disposed to distinctly lown, that the ryot and his heirs or assigns possess a right of continuous occupancubject only to the condition of payment to the Sirkar or its assignee of the "*Sirka share* of the crop or its value as established by proved custom, mutual agreemenor decision of competent authority, and evidenced by the Puttah and Muchilkanless these documents have been dispensed with by proved mutual agreement—wiliberty to dispose of such right by sale, gift or otherwise, until evicted by due courof law for failure to discharge such legally established and limited charge on thend, or to enter into an agreement in the form prescribed by law with respect such limited charge.

Honorable Mr. Carmichael.
Honorable Mr. Sullivan.
Mr. Forster Webster.
Mr. H. E. Stokes.
The Government Pleader.

5. The Government consider thas suggested‡ by the Famine Commission, the Bill should provide that all tenancies in Zamindari or Inam lands *primâ facie* carry a right of proprietary occupan and should throw on the Zamindár or Inámdár the *onus* of proving the fact in which a non-occupancy tenure has to be inferred. In like manner, where a spal contract at the time of *first* occupancy, reserving to the superior holder the rig of eviction or a higher rent, is alleged, the *onus* of proving such contract should r on the party pleading it.

‡ Paragraph 42.

6. As regards the question of suet' ag, the Government fully agree in the views expressed by the Collector of Sn and the Board of Revenue as to the inexpediency of any State interference. Whatever ill-consequences of such a system, due perhaps to peculiarities of tenure, e observed in other parts of India, none such are apparent in this Presidency. ere, in the first place, the number of ryot proprietors, who do not take part in t cultivation themselves, is comparatively very small; secondly where they have b-tenants cultivating for them, they treat them well; thirdly their position is qu different from that of Zamindárs and Inámdárs—the assignees of the State renue from land.

7. The Famine Commissio assu a state of things under which "the privileged tenant" has no interes in imoving the land; but such is not the case in this Presidency, where the Governnt ryot fully appreciates the benefits which accrue to himself by the improvement the land, which is his own property subject only to a limited charge for State ducsais available means are as a rule devoted to its improvement.

8. In this Presidency, the ryot pietor is, in the vast majority of cases, to all intents and purposes the "*bonâ fide divator*" to whom the Famine Commission desire to restrict the occupancy right. however, by "bonâ fide cultivator" they mean that person only who actually ho the plough or personally labours on cultivation operations, the measure which t recommend, viz., "*to prevent any one who is not a bonâ fide cultivator from acquig or retaining such rights*" would be subversive of property in land throughout e country, and would, by depreciating the value of land, defeat the very object in iew, viz., to augment the wherewithal for the improvement of land. As pointed out Mr. Stokes, the compensation which the cultivating tenant would have to make the expropriated owner would, for many years, leave little to the former to invest the improvement of land; while, at the same time, the savings of men engaged inade and other occupations, now invested therein, would be lost to it. The whole heme is, as clearly shown by Mr. Stokes,

impracticable, as it would very often be difficult, if not altogether impossible, to ascertain whether the holder of the occupancy right were the "actual cultivator" or not, whatever might be the precise signification intended to be attached to the term.

9. Ordered that the following le be despatched to the Government of India:—

(True extract.)

(Signed) E. F. WEBSTER,
Acting Secretary to Government.

To the Hon. D. F. Carmichael.
„ the Hon. H. E. Sullivan.
„ E. F. Webster, Esq.
„ H. E. Stokes, Esq.
„ the Government Pleader.
„ the Board of Revenue.

Letter—from the Secretary to the Govesent of Fort St. George, to the Secretary to the Government of India, Ienue and Agricultural Department, dated 29th April 1882, No. 438.

Land Revenue, No. 25.

* Dated 29th April 1882, No. 437.

With reference to your office letter, dated 24th February 1881, No. 100, I am directed to forward, for the information of the Government of India, copy of the Proceedings* of this Government, in which the suggestions of the Famine Commission, on the important questions of occupancy right in Zamindârid Inâm lands and of the custom of subletting by proprietary occupants, have n fully considered.

ve the honor to be,
Sir,
Your most obedient servant,

Signed) E. F. WEBSTER,
Acting Secretary to Government.

Exd. W. H. French.

60 Copies.

Original

Govt. of (1882) Madras.

REVENUE.

Order, &c., dated 26th April 1882,
Nos. 437-438.

Famine Commission.—Proposals of the — on certain questions connected with the position of the tenants in the Madras Presidency.—Passing remarks on papers relating to the — and forwarding a letter to India Government on the subject.

12

M.R.O. 1—77,006—8-6-37.

(1) Number of pages 210

(2) Date of repair 17-7-98

(3) Initials of the Referencer RV

MADRAS RECORD OFFICE.

Government of Madras.

Rev DEPARTMENT.

G.O. No. 437-38 Press ~~Mis.~~

Dated 29-4- 1882.

Not to be folded or roughly handled

No. 151. Read the following Proceedings of the Board of Revenue, dated 8th September 1871, No. 3,876:—

On the 1st May last, in Special Appeal No. 9 of 1870, judgment was given in a case of paramount importance to the territory of Zemindari and Inam lands. The following is from the summary heading given by the Official Reporter:—"Ejectment by landlord against tenant. It appeared that the land in dispute was the property of a muttum of which the plaintiff was the trustee, and had been let to the defendant's father under a muchilka, dated 14th August 1837, entered into with the Collector, the Manager of the property, on behalf of the Government. The tenancy continued to be regulated by this agreement till plaintiff in 1867, demanded an increased rent, which the defendant refused to agree to pay. Upon that demand and refusal, the plaintiff, at the end of the fasli and without tendering a putta for another fasli stipulating for the increased rent, brought his suit to eject.

"* * * * * Held by Scotla, C.J., * * that neither the Rent Recovery Act nor the Regulations operated to extend a tenancy beyond the period of its duration, secured by express or implied terms of the contract creating it; that, therefore, the plaintiff had a right to eject the defendant at the end of a fasli.

"By Holloway, J.—That there is nothing in any existing written law to render a tenancy once created only modifiable by revision of rent, but not terminable at the will of the lessor exercised in accordance with his obligations."

2. The grounds upon which the learned Judges arrived at these conclusions are, that Madras Act VIII of 1865 has no express provision settling, so as to bind the Courts of Law, the duration of a lessee's tenancy; that its professed effect was the improvement and consolidation of certain Regulations of 1802, whereof a legislative interpretation exists in Regulation IV of 1822; and that nothing can be clearer than the terms of Section 2 of that enactment, namely, "It is hereby declared that the provisions of Regulations XXV, XXVII, and XXX of 1802 were not meant to define, limit, infringe, or destroy the actual rights of any description of landholders or tenants, but merely to point out how tenants might be proceeded against in the event of their not paying the rents justly due from them."

3. It thus appears that Madras Act VIII of 1865 has failed to effect one of its chief objects. Its framers designed to provide for the full protection of the ryot, to secure him the right of occupancy so long as he accepted the putta declared by the Collector to be a proper one in the terms of Section 11. But now it is ruled that the landlord is not bound to offer him a fresh putta at all; that he may sue to eject him, and that the only question in issue will be the date of the expiration of the putta; and as puttas and muchilkas are commonly exchanged every year, running from fasli to fasli, the tenant is virtually left without any right of occupation at all.

4. That the very opposite of this was contemplated by the framers of the Bill the Board will shortly proceed to show; but it will be well first of all to prove that the Courts themselves have up to this time ratified this view. In Special Appeal No. 126 of 1869 the following remarks occur in the judgment:—"Now, this tenancy has been found by the Civil Judge to have been that of an ordinary puttadar (in one of the mootahs in Salem), and we apprehend the established general law of this Presidency to be that such a tenancy, when properly created, entitles the tenant to

the right of occupancy for the purpose of ...ivation, until default in payment of the stipulated rent at the time it becomes du... and that it may be determined upon such default under Section 41 of Madras Act ...II of 1865, or at any time by the landlord's acceptance of a surrender by the ..., which is required to be in writing by Section 12 of the same Act." The le... Chief Justice took part in his earlier judgment, but he is now of opinion tha... ent "too far in laying down the rule as to a puttadar's right of occupation in t... oad terms that it does."

5. Then, as to the intention of ... Legislature, the following narrative will suffice to show what it was:—

(1.) In the Bill, as brought in b... e Honorable Mr. Maltby, all Zemindars, Shrotriemdars, Jaghiredars, and Inam... s are styled landlords of the first class, "occupying the place of Government in... ference to the land, and entitled only to the tax payable therefrom or to a portion t... eof."

(2.) In the first Report of the S... ct Committee,* dated 18th May 1864, the following declaration is found in paragraph 4:—"As Zemindars and similar proprietors occupy, in a great degree, the position of farmers or assignees of the public revenue, the Regulations now in force not only give them power to exer... e the process necessary to collect their dues, but carefully protect the rights and int... sts of occupants of land under them. For this latter purpose the Collector is auth... ized to enforce the exchange of puttas and muchilkas; to prevent or punish exac... hs and illegal demands for an increase of rent; and to fix the rates of rent in cas... f dispute."

(3.) After this the Select Comm... tee had before them a voluminous report from the Board of Revenue on the relative positions of Zemindar and ryot. The Collector of Vizagapatam (Mr. Carmichael) had pressed for more explicit declarations in the Bill on this subject, and strongly urged the repeal thereupon of Regulation IV of 1822. He pointed out that the short but pregnant terms of that enactment are taken word for word out of the Bengal Code,† and that the original Regulation was repealed in Bengal when the laws relating to the recovery of rent in that Presidency were consolidated, with modifications, by Act X of 1859.

Had this suggestion been adopted, all arguments on the scope of the earlier Madras Regulation would not have been peremptorily excluded as it is now held to be. Why it was neglected the following extract from the second report of the Select Committee sufficiently informs us. After expressing their obligations to the paper of the Board of Revenue, they proceed thus (paragraph 4):—"The Committee deem it unnecessary to enter into the discussions to which the important measure of the permanent or Zemindari settlement has led. They will shortly observe that, without going so far as to hold that Zemindars are only farmers or assignees of the public revenue and not proprietors of their estates, they unanimously concur with the Board that the Regulations of 1802 were intended to protect the rights of occupants

* Mr. Maltby.
„ Pycroft.
„ Pelly.
„ Norton (Advocate-General).
C. Lutchmanarsimha Chetty.

Proceedings of the Board of Reven... No. 7,743, dated 2nd December 1864.

† Section 15, Regulation VII of 1799.

21st December 1864.

of land under Zemindars by fixing the maximum rent demandable from them, and forbidding their ejectment as long as that rent was paid. The Committee further hold that Regulation IV of 1822 (no less than Regulation V) was passed for the increased protection of such occupants of land in consequence of passages in the Regulations of 1802, which spoke of a proprietary right being conferred on Zemindars having led to doubt and misapprehension."

(4.) When this second report was presented, the Hon. R. Ellis put some important amendments on the paper, in consideration of which Mr. Pycroft (who had charge of the Bill at this time, Mr. Maltby having left the country) recommended, when the Council met on the 18th February 1865, that the Bill should be recommitted, and that Messrs. Ellis and Phillips should be added to the Committee. This was agreed to.

6. The Council met again that day month, when the Select Committee's *third* report was presented. Mr. Ellis, it seems, had proposed in Committee that, if a ryot refused the putta offered him by the Zemindar, the latter might summarily eject him from the land without the necessity of resorting to the Collector to enforce acceptance of the putta on its being found by the Collector to be a proper one.

7. The remaining members of the Select Committee recorded their dissent from this proposal, which nevertheless was somehow carried at the next meeting of Council *nem. con.* His speech is reported as follows, and it will be sufficient to say of it that, while his other assertions must remain matter of opinion, the first and last are so extremely incorrect that it is matter for surprise how they escaped instant refutation:—"He said that under the existing law the landholder possessed this right. It had been given to him more than sixty years ago, and no complaint had ever been made that it was abused. It was in accordance with native feeling. The landlords are anxious not to be deprived of it, since, even though the power might rarely be used, the knowledge that it existed would prevent contumacious tenants from refusing to accept puttas on frivolous and insufficient pretexts. He thought it unwise now to take away a right which was ancient, beneficial, and had been approved of for more than half a century."

8. If the Bill had gone up to the Viceroy with this confiscatory clause, it may be surmised with confidence that it would never have passed into law. The Council, however, were no longer in favor of it when they met twelve days after on the 1st April. On this occasion it was withdrawn from the Bill after universal condemnation, which would have been more severe had not there been a misunderstanding about the matter. The harsh nature of the proposed addition "or summarily to eject such tenant" was not fully apprehended. Mr. Ellis clearly never intended that the Zemindar should take the ryot before the Collector at all; but those who spoke in the Council appeared to think that, if the Collector found the Zemindar's offered putta a proper one, the ryot might be forthwith ejected by the Zemindar without the option of submitting himself to the decision by the terms of Mr. Ellis's amendment.

9. The Collector of Vizagapatam (Mr. Carmichael) was one of those who took the latter view. He immediately telegraphed to the Board as follows:—"Urgent. Section 10, amended Rent Bill. The ryot has right of occupancy, but on what terms may often be complicated question.

Proceedings of the Board of Revenue, dated 31st March 1865.

Everybody may contend for supposed rights without further penalty than costs and damages if found in the wrong. Is the ryot alone to suffer confiscation besides? I entreat Board to move Government against the order of ejectment at option of Zemindar. The public peace is deeply concerned." The telegram was submitted to Government in due course before the final discussion. This concludes the history of the Bill, which passed as it was settled at this meeting of the 1st April 1865.

10. It being evident, therefore, that the local Legislature supposed it had secured the right of occupancy to the tenantry of "Zemindars, Jaghiredars, Shrotriemdars, Inamdars, and persons farming lands from the above persons or farming the land revenue under Government," the Board resolve to urge Government to obtain an enactment affirming this right in unmistakable terms; but then the question arises, is the right to belong to every ryot without limitation?

11. It is a curious circumstance that the word RYOT never once occurs in the Act. "The term 'tenant' shall, for the purpose of this Act, include all persons who are bound to pay rent to a landholder" (Section 1). An Ijaradar, therefore, is a tenant no less than a ryot, and the engagement of the landholder, whether with the Ijaradar or the ryot, is equally termed a *putta* (Section 3). If the landholder proceeds by a summary suit to enforce acceptance of a putta, the Collector is first to inquire whether the party sued is bound to accept a putta and grant a muchilka, and *unless this is proved* the suit is to be dismissed with costs (Section 10). But in the reverse case, where the landholder is sued on refusal to grant a putta, no similar preliminary inquiry as to the defendant's liability to grant a putta is necessary; the Collector trying the case is to "direct a proper putta to be granted, and shall award to the tenant such costs and damages as may be shown to have been incurred."

12. The dictum "once a Puttadar, always a Puttadar" cannot have been intended as the enactment in *all* cases. Yet the language admits of no other interpretation. To exclude renters and such like the old fashioned word "Ryot" should be adopted, and it should be distinctly specified—as has been found necessary in another Presidency—what gives a ryot the right of occupancy. These alone should be entitled to hold at the rates described in Section 11. Mr. Edward Currie, in introducing, October 10th, 1857, the Bengal Recovery of Rents Bill, said, "the Bill also declares that all resident ryots have a right of occupancy in the lands held or cultivated by them so long as they pay the rents legally demandable from them," and by Section 6 of the Act (X of 1859) this right accrues after twelve years, the holding of the father, or other person from whom a ryot inherits, being deemed to be the holding of the ryot within the meaning of that section.

13. In conclusion, the Board resolve to point out that immediate action is required. The crisis is undoubted, for any ryot can now be turned out of his holding at the end of a fasli. Much mischief has not, the Board hope, been done yet, because the High Court judgments (and this one was *officially* published in July last only) are not at once widely known.

(A true Extract.)

(Signed) J. B. PENNINGTON,
Acting Secretary.

No. 132. Miscellaneous.

ORDER THEREON, 13th March 1876, No. 366.

THIS reference has, from various causes, now been lying so long unnoticed, that it appears expedient to request the Board of Revenue—before any steps are taken in the direction suggested by them—to inquire and report whether the results anticipated in the concluding paragraph have ensued and to what extent, within the knowledge of Collectors of districts and their Divisional Officers.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Board of Revenue.

Rd F. R. Bartleman.

Extract of Proceedings of the Board of Revenue, dated 28th March 1876.

Read the following Proceedings of the Madras Government, dated 13th March 1876, No. 366, Revenue Department:—

Abstract.—*Ejectment of Tenant by Landlord.*—Requesting the Board of Revenue to report whether the results anticipated in the concluding paragraph of their Proceedings recommending an enactment for securing the right of occupancy to tenantry of zemindars, &c., have ensued, and to what extent.

MADRAS:
Nos. 131-132.

G.O., 15th March 1876, No. 366.

28th March, 1876.

To

THE BOARD OF REVENUE.

Read,

Exd.

R. 16-3-82
R. 23-3-82

No. 851.

Proceedings of the Board of Revenue, dated 28th March 1876.

Read the following Proceedings of the Madras Government, dated 13th March 1876, No. 366, Revenue Department:—

Abstract.—*Ejectment of Tenant by Landlord.*—Requesting the Board of Revenue to report whether the results anticipated in the concluding paragraph of their Proceedings recommending an enactment for securing the right of occupancy to tenantry of zemindars, &c., have ensued, and to what extent.

Communicated to all Collectors, who will institute the necessary enquiries and report what has been the effect of the ruling adverted to, after consulting their Divisional Officers and such other persons as they deem expedient.

(A true Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

(True Copy.)

(Signed) M. JORDAN,
First Assistant.

To all Collectors, with Government Order.

Copy to the Secretary to Government, Revenue Department.

Exd. J. W. Fischer.

1876.

Board of Revenue,

MADRAS.

PROCEEDINGS, 28TH MARCH 1876, No. 851.

Encl.

Received

MARCH.

No. 851.

Ejectment of Tenant by Landlord.—Communicating to all Collectors for report Government Order requesting Board to state whether the results anticipated in the concluding paragraph of their Proceedings recommending an enactment for securing the right of occupancy to tenantry of zemindars, &c., have ensued, and to what extent.

From W. F. GRAHAM, Esq., Acting Principal Assistant Collector in charge of Ganjam, to H. E. STOKES, Esq., Secretary to the Board of Revenue, dated Causiboogah, 11th June 1877, No. 1,956.

I HAVE the honor to reply to the Board's Proceedings of the 28th March 1876, No. 851, calling upon Collectors to make inquiries and report what has been the effect of the ruling of 1st May 1871 of the High Court to the effect that a landholder can eject a tenant from his holding on the expiry of the term of a putta without offering him a fresh putta.

2. As Acting Principal Assistant Collector I reported in my letter, dated 6th July 1876, No. 181, that no complaints had been made to me that ejectments had been made by landholders on the strength of the ruling of the High Court referred to.

3. The Acting Senior Assistant Collector, in his report, dated 5th December 1876, No. 304, among other things, says that "in this division, as far as I can gather from a perusal of decided cases, no ryot or tenant has been ejected except under the provisions of Section 10 or 41 of the Act,* *i.e.*, on failure to accept within ten days a putta decreed by the Collector, or for failure to pay the rent when there was no sufficient distress and no saleable interest in the land; nor does it appear that in past years the point in question has been raised here."

* This apparently refers to Madras Rent Recovery Act VIII of 1865.—W. F. G.

4. Very few revenue suits are instituted in the Collector's office, and they throw no light on the subject under reference. I have no information as to any suits which may have been filed in Civil Courts.

5. Information, however, as to suits instituted would not enable us to ascertain, or with any degree of accuracy to measure, the injury caused to ryots by the High Court's ruling, especially in out-of-the-way places, which many zemindaries are, where ryots often dread the approach of officials, and even the more intelligent, classes dislike to seek redress in Courts, partly because of the expense and trouble, and partly because of the uncertainty of ultimate success.

6. Putting aside suits there are no other trustworthy data by which to determine the measure of injury done to the ryots. But I find on record, however, the following facts which occurred in 1875, *i.e.*, a few years after the date of the High Court's ruling, and not long after it came to be generally known, which seem to show the tendency of the effect of the ruling.

7. One of these is a general complaint of the ryots of the Chikaty Zemindari presented to Mr Davidson in April 1875 by a large deputation, who went all the way to Chetterpore for the purpose. They complained that the Zemindar's Diwan, the late Kamaraju Pantulu, had been for *three or four years* exacting from them exorbitant rents by an arbitrary estimation of crops and levying an undue proportion of land-cess, and also certain unauthorized fees for himself (the Diwan), threatening them (the ryots) with ejection from their holdings (their sole means of subsistence) if they dared to appeal to the authorities. This implies the exercise of an irresistible power which the High Court's ruling by implication declared to be vested in the Zemindar—the power of arbitrarily ousting a tenant from his holding on the expiry of the term of his putta. The Zemindar, in reply to a letter calling for explanation, stated, among other things, that to protect his own interests he had recently introduced a more searching and correct system than had before existed, of having the estimates of crops checked and superintended by his Diwan, which caused no real hardship to the ryots; that the amount of land-cess levied was not unduly high; and that the Diwan's fees complained of were paid out of the landlord's share and not out of the ryots' share.

i.e., apparently after the promulgation of the High Court's ruling.

No formal inquiry was made, though some correspondence took place with the Zemindar, chiefly with a view to bring about a reconciliation. The matter ended with the following order of Mr. Davidson passed after the death of the Diwan, Kamaraju Pantulu, against whom the complaint had been principally directed:—"As it is hoped that a thorough reconciliation has now been effected between himself (the Zemindar) and his ryots, there does not appear to be any occasion now to pass orders on the subject of the dispute between them."

8. The other case was a similar complaint from the ryots of the Kallikote Zemindari. On the 8th November 1875 a large deputation of Kallikote ryots arrived at Chetterpore and presented a petition, No. 1,993 of 1875, to Mr. Davidson, complaining that, as is the custom in the taluq just before crops were ripe for harvest, the Zemindar rented out the villages for treble the amounts the land could properly bear; that he was instigating the renters to estimate the crops at double the real yield, and to collect the landlord's share accordingly, and to bring false complaints before the Zemindar himself against recusant ryots, in order that the Zemindar might use his authority to induce them to submit to the renters' demands; that the renters were accordingly making an exorbitant estimate of the crops and carrying away both the landlord's and the ryots' shares, and also by the Zemindar's advice were carrying away and selling cattle and stocks of food: and that several unlawful cesses, of which they named nineteen, were being levied from them

in contravention of the orders of Government on the subject. Upon this Mr. Davidson seems to have directed the petitioners to say what they considered they ought properly to say. They then, in a petition, No. 2,106 of 1875, dated 12th November 1875, stated that the assessment of the land, the land-cess due thereon, and a cess called "Chadokhayi Tondo," which is levied at the rate of Rupees 8 for a large village and Rupees 4 for a small village, were the only items they could justly be called on to pay, besides unpaid labor which they contribute for the construction of the car; but that the other cesses which they enumerated were being forcibly exacted from them by maltreatment and by sale of their property; and they requested that puttas, either individual or joint, be given them for money-rents fixed according to the amounts settled at the time when the estate was under the management of the Court of Wards several years ago, adding thereto the amount of land-cess due on those amounts; and that they be relieved of the system of paying by a division of the produce, which subjects them to much oppression.

Meanwhile the first of the two petitions had been forwarded to the Kallikote Zemindar for any explanation he might wish to offer, with a request that he and others mentioned in the petition would meet Mr Davidson at Rumbah on the 12th November 1875.

The following order passed by Mr. Davidson on the 13th November 1875 on petition No. 1,993 of 1875, dated 8th idem, next appears in the case and concluded the matter:—

"In accordance with the above request the Zemindar, his Patro, and others visited me at Rumbah. I heard what they had to say, and the petitioner Narano Swayi also mentioned to the Zemindar in person what the grievances in which he and the other ryots had to complain of. The Zemindar promised faithfully to inquire into the alleged grievances and, if necessary, afford redress. The petitioners have made a vague general statement in regard to alleged maltreatment. No individual case has been cited, and I can only therefore refer the parties to the Ganjam Sub-Magistrate should they in future be subjected to ill-treatment. It is for the petitioners now to go to the Zemindar in a quiet, respectful manner, and if they state their grievances truthfully and without exaggeration, in all probability the Zemindar will afford them redress. Their application that I should arbitrarily require the Zemindar to fix their rents at which they were twenty years ago is unreasonable and out of the question."

9. These instances lead to the inference that although the ejection of ryots from their lands may not have taken place to any great extent in consequence of the High Court's ruling, yet it has had the effect of emboldening landholders successfully to force arbitrary terms upon their tenants, and of paralysing the efforts of the ryots to resist the demands of their landlords. Tenaciously attached as a ryot is to his holding, which in many cases forms his chief if not his sole means of subsistence, and impressed, as he now is, with a sense of the instability of his position at the expiry of each year's putta, he would not dare to incur the displeasure of a landlord armed with the power, if he wished to exercise it, of ejecting him with impunity at the close of each year.

10. The ryots' interest and safety thus consists in his securing the good will of his landlord, however dearly it may have to be bought and whatever oppression he may have to endure, and he must needs keep aloof from Courts of justice in order to avoid the risk of incurring his landlord's displeasure, and thereby being turned out of his holding at the next opportunity.

11. In the circumstances of the case, it is scarcely possible for the ryot to take advantage of the protection which it is intended to give him in the rent law, and sooner or later the rent law itself must practically become a dead letter.

Exd. A. F. Goodall.

From H. St. A. GOODRICH, Esq., Acting Collector of Vizagapatam, to the Acting Secretary to the Board of Revenue, dated Vizianagaram, 28th October 1876, No. 1,524.

In answer to the reference contained in your Proceedings of 28th March last, No. 851 (received by me 25th May), I have the honor to report as follows:—

The effect of the ruling adverted to has been to reduce the tenantry of the Zemindars from the position of tenants who were habitually cajoled into acceptance of the position to that of tenants who know no refuge from the position of dependants of their landlord to be evicted without compensation from their fathers' homes at his will.

2. The subject of the law of landlord and tenant has been discussed at large in the Board's Proceedings, dated 2nd December 1864, No. 7,743, and has a literature of its own to which I am not disposed to add. On receipt of the Board's Proceedings dated 28th March, I requested the opinions of my Divisional Officers, of the Zemindar of Sangamvalsah, of the Diwans of Vizianagram and Bobbily, of the District Munsifs and Huzur and Sub-Collector's Sheristadars, of Mr. A. V. Narsinga Row, and of the Manager of Kassimcotta. I add a rough digest in the three following paragraphs of their expressed opinions on the salient points of the question.

3. (*a*). On the questions "Has the judgment of the High Court in S. A. No. 9 1870 modified the view of the law prevailing on the custom subsisting prior to its delivery? Has it governed the decisions of Civil and Revenue Courts? Mr. A. V. Narsinga Row and with him the District Munsifs of Rajam and Parvatipory believe that the law always was to the effect that a putta conferred merely a yearly tenancy and the rights thereby conferred expired with the lapse of the year to which the putta related.

The Vizagapatam District Munsif goes further and says: "All tenants in this country are treated as tenants-at-will however long the duration of their tenancy may have been."

The Principal Assistant Collector and his Sheristadar agree in thinking that the High Court ruling has reversed the older law which gave right of occupancy to a non-defaulting tenant. Landlords never before that ruling raised rents without the Collector's sanction. They do so now relying on the Civil Courts: sixty suits for ejectment have been instituted since 1870, but their number is no index of the extent of the influence upon engagements between landlord and tenant exercised by the rumour of the opinion prevailing in the Courts.

The Sangamvalsa Zemindar says: "The judgment established and secured the right of landlords to eject their tenants-at-will. I believe this was doubtful previously to its delivery. I prefer long terms, and have myself made a settlement for ten years with my ryots.

The Bimlipatam District Munsif is of opinion that the law always left the right of the ryot to renewal of his putta undefined, and this was little felt during the long series of years when landlords contended with each other to attract tenants to their lands. When the conditions became changed and population began to press upon the land, this doubtful point ought to have been settled. "The delay that has already occurred may have destroyed the best evidence the tenants had, and the writtent agreements they are obliged to execute to the landholders every year, or on every occasion that a lease is renewed, may have imperceptibly cancelled their rights or weakened them!

My Huzur Sheristadar says: "I remember the following changes of popular opinion as to what the law is or was. In 1863 Mr. Carmichael refused to allow a proprietor to eject tenants who refused to accept puttas drawn up at enhanced rents. From that time till 1871 it was believed that rents could not be enhanced but with the Collector's sanction. Since the decision of the High Court in that year became known it has been believed that the law has been modified in the landlord's favor. Civil Courts, but not Revenue Courts, have accepted the judgment as binding on them."

The Vizianagram District Munsif grants that the Civil Courts are absolutely at issue with the Revenue Courts; the former hold the Collector's consent not to be a necessary antecedent condition to the compulsion of a ryot to accept a putta at enhanced rates. The latter require that consent.

On this point I beg that the cases cited by Mr. MacCartie in his letter enclosed be considered.

The Diwan of Vizianagram admits that the judgment has strengthened the position of Zemindars. He says:" the ryot, under Act VIII of 1865, has the privilege to continue his tenancy. The landlord has no privilege to insist on a tenant's leaving the land. *The Act* is, therefore, more favorable to the tenant than to the landlord. The *judgment* establishes the right of the landlord to rent out his land after the expiration of the lease! (I enclose the Diwan's letter as the above statement is the gist of his reply and is not unqualified.)

4. (*b.*) On the question "If the ruling had the effect of altering the relations subsisting between landlord and tenant, was the change borne without discontent?" official opinion is generally that the ryots have not power or money enough to risk a fight in the Civil Courts with a wealthy landholder; further, they have some reason for expecting defeat in such a contest on the point at issue. This state of things has caused, and still causes, discontent.

The Vizagapatam District Munsif says "it is true that before the promulgation of the decision the Courts differed in opinion and likewise the landlords were backward to eject tenants at their pleasure. Since the decision they are openly ejecting them at arbitrary will and suddenly depriving the tenant of the fruits of his labor of years. Great discontent is, therefore, of course, felt among the poor tenantry, and I know instances in which some tenants were obliged to quit the lands with tears. It was believed that the Zemindars are no lords of the land, but that they have a right simply to collect the rent of lands on behalf of Government, &c. But now the case is apparently different. The Zemindars consider themselves as lords of the soil, and their Revenue Officials (either to satisfy their master or to take vengeance against an impertinent ryot) are now after taking advantage of the ruling of the High Court. The tenants are alway looking for a season which brings them an enactment sanctioning stability to their holdings."

5. (*c.*) Has the influence of the decision helped landlords to raise their rents? Have rents generally risen? and, if so, is this the only cause of the rise?

The Diwan of Vizianagram says it has greatly helped landlords to enhance, and they have enhanced, rents, but only in proportion to the improvements executed and the rise of prices due to increased demand for all agricultural produce.

Mr. A. V. Narsinga Row says landlords could only enhance with the Collector's permission, and that is still required.

The Huzur and Sub-Sheristadars say the High Court's ruling has led to oppression and rack-renting. The ryots care not for the expense and trouble of suing in the Revenue Court when their landlords will probably after all eject them by a suit in a Civil Court even if they carry the day before the Collector. The Vizagapatam District Munsif says the Zemindars have of late years been greatly assisted in enhancing rents by the effect of the decision which keeps them in apprehension of ejectment.

6. The Bimlipatam District Munsif states, in as many words, "I hold that zemindari tenants have no saleable interest in the land they occupy."

My Huzur Sheristadar does not go so far as this, but would draw a distinction between tenants of a Zemindar and tenants of an Inamdar; to the former he would concede a right of occupancy, and from the latter he would withhold it on the ground that the Inamdar often personally directs and assists the cultivator: the distinction is unsound.

7. I believe that the general rise of rents began before the passing of Act VIII of 1865; that, as its influence extended, the general rise of the money-value of all produce kept the farmers at least as well off as their class had been before, and hence no conflicts arose sufficiently intense to force on a decision of the question at issue. I believe that the opinion prevails in zemindari

districts that the law requiring the Collector's sanction to an enhancement of rent is a dead letter; that opinion governs men's actions. It is based on the experience of the results of suits in the Civil Courts to whose reversal of the administrative policy of the Revenue Officers' attention has been too little directed.

8. In the Proceedings of the Board of 2nd December 1864 and in the debates upon Act VIII of 1865 light was thrown from many quarters upon the history of the question. One of the most acute suggestions was that of the late Mr. Sadagopa Charlu; granted that Zemindars in permanently-settled estates cannot over-raise the assessment on lands occupied at the time of the grant of their sanad or deny the right of occupancy to the ryot's holding such lands or perhaps to the heirs of such ryots, still it would seem that they may rack-rent the land and treat as squatters the cultivators of tracts which at the time of their engagement with Government were waste. The state of the Permanent Settlement Accounts and the fact that no regular survey was then, or at any subsequent time, made reners it impossible to adopt this criterion even if we were, in Madras, disposed to distinguish between 'occupancy' and 'non-occupancy' ryots. The records of families are not in many cases well kept, and but a small proportion even of the ryots who descend from a permanent settlement holder could prove their descent. Even the curnams who would naturally record facts more carefully than any other class, have frequently several links wanting or doubtful in their pedigrees.

Enclosure No. 1.

From C. F. MacCARTIE, Esq., Acting Senior Assistant Collector, to the Acting Collector of Vizagapatam, dated Vizianagaram, 22nd August 1876, No. 293.

As directed in your endorsement without date, I have the honor to submit the following remarks upon the effect of the High Court's ruling in Special Appeal 9, 1870, adverted to in Board's Proceedings, No. 20,851, dated 28th March 1876.

2. The conclusion at which the Judges arrived was that as neither the Regulation of 1802 nor the Summary Act contained any express provision determining the duration of a lessee's tenancy therefore a landlord is not bound to offer a fresh putta to an old tenant whom he may eject at will on proving that the putta has expired.

This being the purport of the judgment, the first point for inquiry is the important question whether the law and custom previously existing have undergone any material modification thereby.

3. As the relative positions of landlord and tenant in zemindaris have nowhere been defined with sufficient accuracy, and as the rights of the latter with regard to occupancy have been left undetermined both by the old regulations and the Summary Act, it follows that a landlord could always have recourse to law in order to eject a tenant on expiry of the contract contained in the cowle and cadapa.

The tenant had no other guarantee than the contract with the landlord; and as he could relinquish at will, so also was it open to the landlord to reclaim his lands on termination of the period for which it was let. The ryot's status depended absolutely upon the terms of the agreement which subsisted between him and his landlord.

4. Such being the case, I see no reason for saying that the state of the law has been changed; all that the Court did was to explain how matters really stood, and, so far as it serves to illustrate the defenceless state of the zemindari ryot, the ruling has been productive of good.

5. But, though the law remains as it was, the practice has been largely modified very much to the disadvantage of the ryot.

6. Previous to the ruling the landlords had the power to eject, as I believe, owing to the absence of any express occupancy guarantee to the ryots; still the question was debatable, and a landlord would naturally hesitate before suing for ejectment without some other reasons on his side; but, since the ruling has rendered it clear that tenants have no occupancy rights, the Civil Courts are extensively resorted to, and the present practice is to pass a decree of ejectment on proof that the term of the putta has expired.

7. Civil Courts then may be said to have adopted the ruling as their guide in deciding such ejectment cases.

8. For the purpose of discovering how far the principle has been adopted in the Revenue Court of this division, I have read every ejectment case on the file since 1871. The number is large, but the bulk have been disposed of on collateral issues. There are a few, however, which come directly within the scope of the High Court's ruling.

9. The only instances in which the principle laid down by the High Court appears to have been accepted are Nos. 34, 48, and 66 of 1871, which were dismissed by Mr. Lee-Warner in accordance with the High Court's order; in the last-mentioned one he goes so far as to permit an ejectment on the ground of personal ill-feeling between the landlord and tenant.

10. His successors, however, ignoring the judicial ruling, adhered closely to the letter and spirit of the Summary Act, and reinstated all ryots who had been ejected for refusal to accept putta containing enhanced sist where the conditions of Section 12 had not been fulfilled.

11. Suits Nos. 50 of 1873 and 44 of 1874 are interesting as they afford an excellent illustration of the manner in which the landlords work the Munsifs' Courts for their own ends.

12. In the first-named case the plaintiff obtained a decree for a cowle in his Court, on which the Zemindar sued to eject him before the District Munsif, who passed an order of ejectment on proof that the old putta had expired, thus practically reversing the decision of this Revenue Court.

13. Suit No. 44 of 1874 had a similar issue; an ejectment on the ground that the landlord was dissatisfied with plaintiff's method of cultivation was set aside in this Court, and some compensation was awarded, but in this case also the proprietor brought a suit against the ryot in the Civil Court and obtained a decree for his ejectment with costs for the same reasons as in the previous case. So far then as occupancy questions are concerned, the subordinate Civil Courts have been set up as Courts of Appeal from the decisions of Revenue Officers.

14. That the relations between landlord and tenant have been much altered and that the latter are deeply discontented with the precarious nature of their occupancy there is no reason to doubt. Formerly it was not the practice to sue for ejectment save on special grounds, but since the ruling the system of annual leases enables the landlord to evict, if he pleases, the whole of his tenants at the end of each fasli.

15. The irritation which naturally results from the harassing liability to ejectment year by year is much increased by the aggravating manner in which some landlords keep back their puttas in hopes of obtaining a higher bid, during which time of suspense the ryot in possession can neither plough nor manure for fear of not being allowed to enjoy the fruit of his industry.

16. The ruling has thrown a powerful engine into the landlord's hands for the enhancement of rents, of which they have most certainly taken advantage, for so long as a landlord can find a ryot who will pay him a higher rent, it is not likely that he will continue to let his land for less than what is offered.

17. These observations apply only to zemindari ryots as a tenant in ryotwary districts appears to stand upon a much firmer footing, which the High Court themselves have acknowledged.

18. In Volume V, 120, of the reports it is laid down as follows:—

"The tenancy of an ordinary puttadar in Madras when properly created entitles the tenant to the right of occupancy for cultivation purposes until default in payment of the stipulated rent," and the tenant's right is assignable as a mortgage security.

19. Bombay ryots also stand in an equally secure position, as Act I of 1865, the key-stone of the Revenue system in that Presidency, guarantees them absolute hesitable and transferrable right in the land they occupy so long as the rent is continued to be paid.

20. Some such guarantee is very much wanted in these parts.

(True Copy.)

(Signed) H. St. A. GOODRICH,
Acting Collector.

ENCLOSURE No. 2.

From P. JAGANATHA ROZ, Diwan to His Highness the Maharajah of Vizianagram, K.C.S.I., to the Acting Collector and Agent to the Governor of Fort St. George in Vizagapatam, dated Vizianagram, 8th June 1876.

WITH reference to your circular, No. 874, dated 31st ultimo, I have the honor to state the following in reply to the queries therein mentioned, viz.:—

Queries.	*Replies.*
1. Has the judgment delivered by the Madras High Court in S. A. No. 9 of 1870 modified the law and custom existing prior to its delivery?	No permanent settlement has been made between the landlords and tenants in this district. The ryot is as necessary to the landlord as the land is to the ryot.

In the samastanams and other native estates the lands are always under ryots, and in case of a tenant happening to leave the land either from disease, old age, or other infirmities or defects, the land is rented out to another ryot same as in the Government taluqs, where, in case of a ryot failing to pay up the Government dues, his farm is auctioned and made over to another ryot. But the lands are never kept under the cultivation of landlords, while the ryot is offering to take them. It is customary even now, same as in former times, according to my experience of last forty years, to render every help to the ryot to continue his tenancy, such as, advancing him funds to buy cattle and seed grain, and allowing him more instalments and remissions in the favorable seasons according to the state of his crop. It seems that there never occurred any necessity to eject a ryot so long as he fairly fulfilled the conditions of muchilka. In the Madras Act No. VIII of 1865 the ryot has the privilege to leave the land at the expiration of his lease or to continue his tenancy as he likes, but the landlord has no privilege without permission of authorities to insist on such a ryot to renew his muchilka or to leave the land. Three months' time is allowed to the ryot (who has no more to do than to wait on his landlord) to obtain a lease, but to the landlords (who have to deal with several ryots and are engaged in different matters of business) are allowed only one month to get a muchilka from the ryot. The Act, as it appears, is, therefore, more favorable to the tenant than to the landlord. In cases of ryots, who, however, fail to act up to muchilka or attempt to deceive the landlord, the method of ejecting them, when justly seemed necessary, is already put down in the Madras Act No. VIII of 1865, as well as in Regulations that existed before it came into operation. The judgment above cited does not, therefore, seem to modify the law and custom existing prior to its delivery.

Queries.	*Replies.*
2. Has it been accepted by Civil and Revenue Courts generally as governing their decisions?	As the judgment establishes the right of the landlord to rent out his land after the expiration of the lease, it seems to have been accepted by the Civil and Revenue Courts as governing their decisions in cases in which it seemed just to enable the landlord to rent out his land to a proper tenant after the expiration of a lease.
3. If the effect thereof was to alter the terms of the usual relation between the landlord and tenant, has the change been borne without discontent?	It is natural to landlords to like and retain their tenants to any length of time provided the latter are fair in their dealings; so the judgment does not seem to alter any terms of the usual relation between them, or cause any discontent between them.
4. Has the effect of the judgment been to assist landlords in enhancing rents?	In respect to ryots who take pleasure in playing tricks with their landlords and refuse to pay any reasonable cists according to the improvements made by the landlords and the present high prices, which are four or five times greater than before, the judgment has been a great help to the landlords in realizing what is justly due to them.

5. Have rents been enhanced, and, if so, would you refer the fact to this cause alone?

The rents do not seem to have been generally enhanced except in cases of lands which are enriched by improvements and to which more water-supply is subsequently allowed by irrigation works, besides the numerous facilities and advantages from construction of roads and frequent exports, and consequently the judgment does not appear to have been a direct cause for enhancing the cists nor do the enhancements thus effected come at least to one-fourth or one-fifth of the ryot's profits accrued by the aforesaid improvements, irrigation works, roads, and exports.

In conclusion I respectfully beg to state that the effect of the above-mentioned judgment appears to make the landlords and tenants sensible of their respective positions and create harmony between them.

(True Copy.)

(Signed) H. ST. A. GOODRICH,
Acting Collector.

Exd. J. W. Fischer.

From J. KELSALL, Esq., Acting Sub-Collector, to J. HOPE, Esq., Acting Collector of the Godavery District, dated Cocanada, 2nd June 1876, No. 151.

IN reply to the Board's Proceedings of March 28th, 1876, which gave cover to G.O. of March 13th, No. 366, I have the honor to state that no instance has come to my notice in which a landlord has taken advantage of the ruling of the High Court and ejected his tenant at the close of the fasli.

2. I speak from an experience gained in Vizagapatam and in this district in both of which suits under Act VIII of 1865 are numerous.

3. I do not think that the ruling of the High Court is generally known even now. It is so opposed to the custom of the country and the practice of many years that people do not easily believe that the High Court hold such an opinion. It is quite possible that in a few cases the "landlord" may have availed himself of it to screw better terms out of his tenant by threatening that he would not renew the lease, but I am bound to say I have never heard of such a case; many suits have been filed under Section 12 to obtain reinstatement after ejection, but the defence has never been set up that the landlord was justified in terminating the lease at the end of the fasli.

No. 193.

FORWARDED to the Board of Revenue in reply to their Proceedings of the 28th March 1876, No. 851.

2. The Sub-Collector's remarks equally hold good for the whole district, and I quite agree with him in what he has said. The High Court's ruling is not well known, and even if it were there is no reason to suppose that any undue advantage of it is likely to be taken.

(Signed) J. HOPE,
Acting Collector.

COCANADA,
6th July 1876.

Exd. W. J. Lewis.

From G. D. LEMAN, Esq., Collector of Kistna, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Masulipatam, 14th September 1877, No. 1,993.

I HAVE the honor to reply to the Board's Proceedings, No. 851, dated 28th March 1876, calling for a report on the effect of the ruling of High Court therein adverted to regarding the ejectment by a landlord of his tenant.

2. I have made inquiries and consulted on the subject with my Divisional Officers and the Judicial Officers of the district.

3. Since the ruling of High Court under reference no summary suits for ejectment have been filed by the landlords against their tenants before me; and the Sub, Head Assistant, and Assistant Collectors report that none have come before them. The General Deputy Collector of Vinnukonda Division states that from the year 1866, up to 25th August 1876, date of his report nine summary suits for ejectment were filed in his Court under Section 12 of the Rent Recovery Act No. VIII of 1865, and that three of them were withdrawn, two compromised, two dismissed, and two decided in favor of the plaintiffs.

4. These do not seem to have been of any importance or to have been instituted by the landlords with the knowledge of the ruling referred to.

5. The District Judge and the Subordinate Judge of Masulipatam have reported that no suits of the kind have been filed in their Courts.

6. The following shows the number of the suits of the nature filed since the rulings of High Court before the District Munsifs' Courts and the manner of their disposal:—

Names of District Munsifs' Courts.	Number of Suits decided in favor of Landlords.	Number decided in favor of Tennants.	Number compromised.	Total.
Masulipatam	1	...	...	1
Guntoor	16	5	7	28
Bapatla	2	...	...	2

7. The District Munsifs of Karempudi and Bezwada have not furnished me with the information, even after repeated calls for the same through the District Judge.

8. The result of my inquiries shows that no mischief has been done by the ruling under reference, I presume because it is not widely known. But there is no doubt that when its provisions are generally known, the interest of the tenants will be always at stake and thereby much mischief may ensue.

9. From the manner in which the Zemindars treat their tenants, I am of opinion that it is not forbearance on their part that has prevented them from taking advantage of the ruling, but that its provisions are not generally known to them.

10. I believe that the right of occupancy should be as secure to the Zemindari as the Government tenant. There can be no doubt that, up to the time when the then Government converted the Collector of Revenue into a Zemindar or owner of the soil, the right of occupancy was always and has, till this ruling, been respected.

Exd. T. D. Ryan.

From F. R. H. SHARP, Esq., Acting Collector of Nellore, to the Acting Secretary to the Board of Revenue, dated 16th November 1876, No. 3,214.

I HAVE the honor to submit my report called for in the Board's Proceedings, No. 851, dated 28th March last, on the subject of ejectment of tenants by landlords.

2. As suggested by the Board, I consulted my Divisional Officers as well as some of the Tahsildars and Deputy Tahsildars connected with the Zemindari, &c., tracts, and herewith submit the substance of the several reports received by me for the Board's information.

3. The Sub-Collector remarks of the zemindari tracts connected with the sub-division including both Venkatagiri and Calastry that no case has come to his notice of a suit having been filed to eject at the end of a fasli merely on the ground that the tenure is a yearly one, but that in the Darsi Division connected with the Venkatagiri Zemindari cowles and muchilkas are exchanged yearly, and, if any one offers wet rates for land hitherto held by a ryot as dry, the latter is ejected if he fails to agree to payment of wet rates. In Podeli, again, forming part of the Venkatagiri Zemindari, an application from a Zemindari Amil was pending before the Deputy Tahsildar for ejectment merely on the ground of asking an increased mucta. But I understand that such action as is noted above is confined to exceptionally choice wet lands on which capital has been sunk by ryots in the construction of wells, or which are otherwise particularly valuable, and I do not learn that the tenure of lands generally has been rendered precarious in the above locality on account of the High Court Decree.

4. The Head Assistant and the Naidupet Deputy Collectors state that no cases of ejectment have occurred in their ranges. The class of landlords in that of the former consists of the Calastry Zemindar, Shrotriemdars, and other small proprietors. The Deputy Collector's Division includes a large portion of the Venkatagiri Zemindari.

5. No cases of ejectment are reported to have occurred in the Atmakur, Gudur, and Udayagiri Taluqs, where there are small proprietors.

6. The Tahsildar of Kavaly forwards a statement of seventeen suits between landlords and tenants filed in the Kavaly Munsif's Court, the jurisdiction of which embraces the following taluqs:—Kandukur, including the Chundi Zemindari, Kavaly, Udayagiri, and so much of the Atmakur Taluq as lies north of the Pennair. Though all these suits have been brought since the decision of the High Court Appeal in 1870, it is not clear that all were instituted in consequence of that judgment or directly for the ejectment of the tenant. I have, however, no means officially of ascertaining this. I forward Bhashica Charry's letter in full, being suggestive and full of information on the subject of the Board's Proceedings and as showing that legal proceedings have been too frequently taken by landlords and their subordinates against tenants as a means of oppression or coercion on account of the tenants refusing certain customary, though otherwise unauthorized, contributions.

7. The Diwan of Venkatagiri has taken pains to go into the matter carefully, and I submit copy of his report for the Board's perusal. He brings to notice that the two ejectment cases marginally detailed were given in favor of the landlord in the District Court by the District Judge on the authority of the decision of the High Court referred to by the Board.

Regular Appeal Case No. 21 of 1873.
" " No 29 of 1873.

8. I had wished to submit some general observations on this important subject, but find I have at present no time for so doing. I conclude, therefore, by remarking that, while only two cases of ejectment have been upheld in this district on the authority of the decision in High Court Special Appeal No. 9 of 1870, there is little doubt that, as the subject is ventilated and the decision is better known, further action will be taken with reference to it, the only check being the fear that, if lands are thus arbitrarily taken from a ryot in a zemindari, he will emigrate to Government taluqs for a more secure tenure. And here I may remark that I am convinced that the great practical remedy for oppression on the part of Zemindars or petty landlords for famines and for the general poverty-stricken condition of the lower grade of the agricultural community is *emigration* to a well-governed tropical colony. With a quarter of those who are now practically slaves or little better gaining their hundreds of rupees in Jamaica and other colonies, coming back with their earnings or writing home glowing accounts of their prospects,

we should have the wages of the other three-quarters rising until for a few months' labor they could earn enough to support them for many months' enforced idleness. I suggest, therefore, that Government should encourage emigration to British Colonies, such has Jamaica and Queensland in Australia by every legitimate means.

ENCLOSURE No. 1.

From R. VENKATAKRISTANA RAU, B.A., Diwan of Venkatagiri, to the Acting Collector of Nellore, dated Venkatagiri, 9th October 1876.

I HAVE the honor to acknowledge the receipt of your foot-note, No. 1,457, dated 24th May 1876, on the Board's Proceedings, dated 28th March 1876, No. 851, calling for my observations on the subject of "ejectment of tenant by landlord."

2. The Board consider that under the decision* of the High Court in Special Appeal No. 9 of 1870 a ryot can be ousted from his holdings at the end of a Revenue year, and urge Government for a legislative enactment against such arbitrary eviction. But Government, before acting on this suggestion, deem it necessary to ascertain whether the injurious results anticipated by the Board have actually occurred, and to what extent.

*Passed on 1st May 1871 and officially published in July 1871.

3. There are cases of ejectment allowed in this district based on the decision of the High Court alluded to. I beg to enclose for perusal and return copies of two judgments passed in 1873 by Mr. J. D. Goldingham, our present District Judge.

Regular Appeals, dated 28th November 1873, Nos. 21 and 37 of 1873.

Regular Appeal, dated 6th December 1873, No. 29, of 1873.

4. In these cases the ryots held the lands for seventy-three years on fixed annual payments, and improved them by sinking wells at a large outlay of their private capital. The then District Munsif of Kavaly who tried the original suits and allowed the eviction, decreed, however, that they should recover the estimated cost of the wells, and the District Judge, in upholding his decisions,† makes the following remarks:—

† *Vide* No. 29 of 1873.

"I regret this decision exceedingly, but the decree appealed against is founded upon the strict law of the country as declared by the highest authority. Formerly there was an idea in the country that a tenancy properly created entitled the tenant to the right of occupancy for the purpose of cultivation until default in payment of the stipulated rent at the time it became due, and that such a tenancy could only be determined by the landlord's acceptance of a surrender by the tenant; but the late Chief Justice at page 171, Volume VI, of the Madras High Court Reports, has declared that the judgment in the case enunciating this doctrine went too far in laying down the rule as to Puttadar's right of occupation in these broad terms."

5. There is apparently some confusion as regards the words "landholder," "tenant," and "putta" as defined in Act VIII of 1865. A few remarks on this point may not therefore be deemed as a digression.

6. The words "landholder" and "landlord" are often used as synonymes, and the idea of an English landlord seems to be present before the mind of an Indian Judge while deciding questions connected with landholder under the Rent Act.

I.—According to the definition in Section 1 of the Rent Act there are only six classes of "landholders—"

Under Permanent Settlement or a fixed demand.

(1.) Holders of portions of districts on Zemindari tenure called Zemindars.
(2.) Do. of entire villages or Inam tenure called Shrotriemdars.
(3.) Do. of portions of villages on Inam tenure (or minor Inams) called Inamdars.

Under annual or a periodical Settlement.

(4.) Holders of land direct from Government as Ryotwar Puttadar.
(5.) Do. do. from 1, 2, 3 as do. do.
(6.) Do. do. from 1, 2, 3 as Ejaradar or Renter.

II.—The first clause of the section quoted which tallies with Section 3 apparently applies to all of these. The second clause would seem therefore superfluous.

III.—The object in passing the law for the recovery of rent is, as explained in the preamble of Regulation XXVIII of 1802, the punctual collection of public revenue by empowering landholders to collect their dues from their tenants without the expense and trouble of a law suit, and at the same time the protection of such tenants from the oppressive exercise of the powers thus conferred on landholders.

IV.—Now an Inamdar (No. 3) and a Government Ryotwar Puttadar (No. 4) are practically on precisely the same footing, the only difference being that the latter pays to Government the full taram assessment of the land he holds, while the former either pays nothing or only a portion of such taram assessment under the designation of quit-rent. A person holding land from an Inamdar is a "landholder", while a person farming from a Government Ryotwar Puttadar is not a "landholder." That is to say a farmer from an Inamdar can recover his dues by a summary process, while a former from a Government Ryotwar Puttadar must undergo the trouble of a law suit against his defaulting tenant. If an Inamdar requires that his tenant should have such power to faciliate the payment of Government demand, there is a still greater necessity in the case of a Ryotwar Puttadar, because, first, the Ryotwar Puttadar pays a larger amount to Government; 2nd, the number of Ryotwar Puttadars is considerably larger than that of Inamdars. A petty farmer holding from a petty Inamdar has the dignified title of "landholder," while the farmer perhaps of hundreds of acres from a rich Government Ryotwar Puttadar is nothing more than a "tenant" whose right of property is now called in question under the rulings of the High Court.

V.—The sixth class of landholders I have mentioned hold lands only for a time as renters. They are generally speculative and intriguing, and are invariable objects of terror to ryots' Are such persons to enjoy all the privileges of a "landholder," and are they to be permitted by law to wring out of the unfortunate ryot as much as they choose? Under the present assumed interpretation of the law, they could take up the richest land in the village by ousting the present occupants and become tenants in their place, enjoying thereby gratuitously all the benefits secured by a great deal of bodily labor and capital of the helpless tenants who probably held the land from time immemorial.

7. The word "tenant" is defined to be a person bound to pay rent to a "landholder." The word "rent" is not defined. But the Board in paragraph 2 of their Standing Order No. 274 observe that "the payments due to landholders by their tenants is (under a bill for the recovery of arrears of rent) for the sake of distinction designated "rent." This is reasoning in a circle. It is clear however that a tenant is intended to be any person who is bound to pay something directly to landholders for the use of lands he holds from them.

Tenants may be classed under three heads—

(1.) A ryot who holds lands hereditarily under an annual putta of a landholder.
(2.) A renter who holds only during the specified term of his lease.
(3.) A cultivator who holds the lands during such definite specified time as he is able to arrange with the landholders.

I.—A Zemindari ryot holding land on annual putta from time immemorial would appear to be placed on a par with the speculating Ejaradar or a temporary cultivator, neither of whom has admittedly any right in the soil.

II.—A Shrotriemdar gives a portion of his land to a certain tenant for cultivation newly this year, and putta and muchilka are exchanged. Is there any think to prevent the Shrotriemdar to make his own term? Can the ryot claim the putta next year under Section 8, or can th

Collector punish the Shrotriemdar under Section 5 for any exaction? The decision of the High Court can fairly be applied only to such cases.

8. "Putta" is a document given to tenants by landholders.

I.—Section 4 of the Rent Act provides that it "shall contain the local description and extent of the land." It is not necessary to enter such details in a putta given to renters of villages. In fact such details are not available in many of the unsettled villages.

II.—Section 12 provides that tenants "shall be allowed to relinquish their lands at the end of the Revenue year." An Ejaradar who takes a lease, say, for three years cannot be allowed to relinquish at the end of the first or second year, and this provision is evidently inapplicable to this class of tenants.

III.—In framing the above Sections 4 and 12 the framers of the Act had evidently in view the putta only of hereditary ryot of the country.

9. The vagueness in the definition of the terms in question seems in some measure to account for the conflicting opinion formed on the subject of the right of occupancy, and an amendment might in this respect be deemed necessary.

10. Puttas for definite periods specified therein, such as those issued to renters and temporary tenants, must be regulated by the terms thereof. The question for consideration is the nature of the tenancy created by the putta granted to hereditary ryots in Zemindaries, &c.

11. The law does not prescribe a form for puttas. In paragraph 17 of their second report, dated 21st December 1864, the Select Committee on the Bill for the Rent Act observe that "the precise form of the putta is immaterial and could not be prepared for all the various cases."

12. Supposing that the putta of Zemindari ryot is in the same form as that issued in Government Taluqs (*vide* No. 18 in the Manual of Village Accounts), it is necessary to consider whether the decision of the High Court would apply to it. The subjoined is the form referred to which would apply to payments whether in money or grain:—

"Putta granted by A, Collector of ———, to B, an inhabtant of ———, *for Fasli* ——."

"The following are the particulars of the beriz of the land in your occupation, the assessment of which amounts to Rupees—which you will punctually discharge through the Monigar according to the instalments noted in the margin, obtaining receipts for the same. In the event of your failing to pay it regularly, due measures will be adopted for the recovery of the same."

13. This is a very simple document. It merely gives the details of land and the amount payable for the year for which it is issued, and tells the holder that "due measures" will be adopted in default of payment. It is in short a bill for the year issued for fiscal convenience and certainty, and in consequence contains no express conditions.

1*st*.—Whether the tenure terminates at the end of the year?

2*nd*.—Whether the demand entered is unalterable?

3*rd*.—What is the penalty for default of payment?

14. The absence of express conditions on these points cannot affect the question. It is sufficient if it can be shown that they are implied by the long established usage of the country.

15. The rights secured under a Ryotwar putta are clearly described in paragraphs 16, 17, 18, 19, 20, and 21 of the Report on the Revenue Administration of the Madras Presidency for the official year 1855-56 subjoined below for easy reference. The report in question is not an ordinary document, as it forms a portion of the Parlimentary records embodied in a Parlimentary Blue Book styled "Return showing the land tenures in the several Presidencies of India."

"16. Under the Ryotwar system every registered holder of land is recognized as its proprietor and pays direct to Government. He is at liberty to sublet his property or to transfer it by gift, sale, or mortgage. He cannot be ejected by Government so long as he pays the fixed assessment, and has the option annually of increasing or diminishing his holding, or of entirely abandoning it. In unfavorable seasons remissions of assessment are granted for entire or partial loss of produce. The assessment is fixed in money and does not vary from year to year, except in those cases where water is drawn from a Government source of irrigation to convert dry land into wet or one into two crop land. Nor is any addition made to the assessment for improvements effected at the ryot's own expense. The ryot under this system is virtually a proprietor on a

simple and perfect title, and has all the benefits of a perpetual lease without its responsibilities, inasmuch as he can at any time throw up his land, but cannot be ejected so long as he pays his dues; he receives assistance in difficult seasons, and is irresponsible for the payment of his neighbours."

"17. The assessment is fixed in perpetuity (so far as any increase to it is concerned) on each field, and the mode in which this was done is as follows:— A certain portion of the produce was first set aside from the gross produce as a joint contribution of the ryot and Government for the pay of village officers and the remainder divided in certain proportions, the share allotted to Government being converted into money at the average value of the produce for a period of years antecedent to the settlement.

"18. Unfortunately the share of Government was generally fixed too high, and the result of this over-assessment increased as its pressure has been by the fall in the value of produce. Since the settlement so made has never allowed the system a fair trial, various restrictive rules also led to much interference with the ryots, though they were far from being a necessary consequence of the system. These restrictions are now being removed, and the reductions recently made are in progress, and the correct survey, classification, and the re-assessment of the land now in contemplation will do away with these disadvantages, and it may be expected that the superiority of a system which encourages industry and enterprise by being based on individual proprietorship will be more clearly evinced.

"19. The annual settlements under Ryotwari are often misundertood, and it is necessary to explain that they are rendered necessary by the right accorded to the ryot of diminishing or extending his cultivation from year to year. Their object is to determine how much of the assessment due on his holding the ryot shall pay and not to re-assess the land. In those cases where no change occurs in the ryot's holding a fresh putta or lease is not issued, and such parties are in no way affected by the annual settlement, which they are also not required to attend.

"20. The greater portion of the Presidency is under Ryotwari, and a correct understanding of its principles when properly carried out is therefore particularly desirable. To revert from Ryotwar to the Zemindari tenure would be to place a middleman between Government and the people to strike off from 15 to 33 per cent. of the existing revenue, and to alienate the waste lands which now afford Government the means of lightening the heavy assessments now prevailing; to have recourse to village rents would be to annul individual property in the land, and to make the community responsible for every member's shortcomings.

"21. The Ryotwari system essentially prevails universally; for the Zemindar and village renter equally deal with their tenants on this principle, and every system, be its name what it may, must in the end resolve itself into pure Ryotwar."

16. The nature of the tenancy created by a Ryotwar putta being, as above described, the question for consideration is, as proposed in paragraph 12, whether the decision of the High Court in question applies to such putta. It becomes therefore necessary to consider the nature of the document which forms the subject of that decision.

17. The suit is said to be found on a muchilka executed in 1837.

I.—The Principal Sudr Amin who tried the suit originally finds (from that muchilka) the tenant "to be a *common renter*."

II.—The tenure is admitted by both parties to be subject to certain services which the landholder says were not rendered, while the tenant accounts for their omission.

III.—The Chief Justice alludes to the institution of the suit for ejectment "without tendering a putta for another fasli," as if there was a renewal of puttas annually.

IV.—Mr. Justice Holloway alludes to a document taken from the landholder some years after the execution of the muchilka of 1837. This shows at all events that there was no renewal of puttas in the interval.

V.—The muchilka of 1837 shows, it is stated, that when the tenant took the lease he agreed to pay a certain rent and no more; adding that in the "event of any more being demanded it should be referred to the Collector." It is not clear whether this is a matter of inference, or whether there are express terms to the effect in the document.

VI.—But Mr. Justice Holloway observes that the document expressly provides "for the increase of rent according to the extent of land *to be* calculated, the characters of the produce raised, and the irrigational benefits enjoyed." This would imply that the extent of the land, &c., is not defined, and that the tenant was at liberty to cultivate as much land as he wished and raise what crop he liked. Or it may be that the subject of the suit is a whole village, and that the tenant is a renter as found by the Original Court. The right of property must be considered as vested either in the owner of the village as Shrotriemdar or the cultivator as hereditary ryot. The renter as a middleman can have no right of property. It is difficult to say whether the conjecture that the tenancy is that of a renter of village is correct, because the suit is said to be for certain "Covil lands" and not a village.

18. It is a pity that the document itself is not available for reference, which can put an end to conjectures. It is clear however that the document contains no specific condition regarding the duration of the tenancy, that there was no renewal of puttas annually, that the tenancy was encumbered with certain services, and that in short the case is not analogous to the case of a putta in the sense in which the question remains to be settled. Under these circumstances, it is but fair to conclude that the dictum pronounced on a tenancy created by such a document cannot apply to the tenancy secured under a document of a totally different nature.

19. The Chief Justice looks upon the "ordinary" putta as creating a tenancy from year to year liable to cease at the end of a fasli year at the will of either party. The opinion thus expressed is altogether an "*obiter dictum*" and not required for the decision of the case in point. It is besides in direct opposition to the doctrine enunciated not only by himself in Special No. 126 of 1869, but also by others in Special Appeals Nos. 15 and 18 of 1812 and No. 8 of 1813, in all of which Mr. Greenway, who was one of the Judges of the Highest Court in the Presidency, and who had a hand in framing the Regulations of 1802, took part.

20. In Special No. 126 of 1869 referred to the 1st defendant, a muttah ryot, mortgaged his land to the 2nd defendant who attached the same in execution of a judgment debt due by the 1st defendant. The Muttahdar sought to recover the land, alleging that the 1st defendant was only a tenant at will. The District Judge found that the 1st defendant's father's name was entered in the accounts as the holder of the lands and he was therefore the registered holder. On these data the Chief Justice remarked that the tenancy is "that of an *ordinary Puttadar*", and "If he had been merely a *common tenant* his name would not have appeared in the accounts." that the established general rule of law in this Presidency entitled the tenant, when "the tenancy was *properly* created," to hold the land so long as he paid the rent.

What is the force of the words "*common tenant*" and "*properly*" italicised by me in the above passage? How can the tenancy of a person who is not a "*common tenant*" when such tenancy is *properly created* terminate at the will of the landholder? The decision under consideration simply states that the decision of 1869 "went too far," but no allusion is made to the earlier decisions referred to of the late Sadr Adawlet.

21. The remarks of the late Chief Justice made in the decision under notice do not however appear absolutely fatal to the occupancy right of the ryots, because he remarks that his interpretation of the language of the document in question is not incompatible with the doctrine that the tenancy is indefeasible so long as the rent is paid if such a condition "was by force of established general custom or positive law made a part of the contract of tenancy." And in coming to a decision in the case he points out that there is no positive law, and observes, as regards to the custom, that "the existence of such a custom has not ever been asserted in the case," and "it might have been made an available defence to the suit." If the tenant in the case failed to establish, or even assert, the custom it was his own fault, and the decision passed in such a case annot be binding in other cases where it can be established.

22. The following passage also occurs in the remarks of the Chief Justice:—

"After carefully considering the combined effect of all the regulations, I have come to the decision that they do not provide in any way for the duration of a tenancy beyond the end of the term for which it was created by the express or implied contract of the parties, whether the tenancy be for a year or longer period."

This is simply a piece of truism. How can any law or custom sanction a longer duration than the period *expressed or implied?* The passage above quoted is by no means fatal to the tenancy of an "ordinary putta" which purports to be simply a bill for the year, while the duration of the tenancy is a matter implied by the general established custom of the country.

23. The tenant in the case under consideration based his right on Regulation XXX of 1802. He should have based his claim on the custom of the country if he held the land on the ordinary putta tenure, which involues such a custom.

24. The arguments of the learned Judges may in their own words be summarized as follows:—

(1.) The provisions in the Regulation of 1802 as well as the Rent Act of 1865 "do not in the least relate to the duration of the right of holding." The powers given to Collectors for ejectment constitute merely a provisional remedy, and "the duration of the tenancy is still a matter left for determination in a regular suit by the application of the general law to the agreement of parties in each case."

(2.) Section 12 of Act VIII of 1865 "assumes that Civil Courts may eject tenants on grounds wholly beyond the scope of the Act," and the latter part of it "would be strongly opposed to the construction that the tenancy having once commenced must be permitted to go on subject to the power of revising the putta and adjusting the rent which is given by the Act." "It would be curious if one of the contracting parties could put an end to the tenancy at the close of the Revenue year and the other never."

(3.) The legislature has not determined the limits within which "landholder can exercise his rights." If it had "it would not have been necessary in Bengal, possessing regulations upon which the Madras ones were framed, to declare in the year 1859 that a right of occupancy, such as the defendant here asserts, should arise on a holding of a particular character for a particular time."

25. The Regulations of 1802 do not, the learned Judges observe, define, limit, infringe of destroy the actual rights of landholders or tenants. So the Regulation IV of 1822 says: Now Section 4 of Regulation XXVIII of 1802 saves implements of husbandry from attachment by landholders. Is it not a right of tenant to claim exemption from distraint? Does not this section contain a limit to the right of landholders? There are several other sections which point to other rights. It is difficult to understand therefore the force of the general and sweeping remarks alluded to. Assuming however that the Regulations of 1802 are merely rules of procedure it cannot still be denied that the Regulations assume the existence of some rights whatever they may be. Is there nothing in those rules of procedure calculated to ensure the protection of the agricultural community against arbitrary and improper exaction?

26. By Regulation XXV of 1802 the proprietory right of Government in land was transferred to Zemindars. What are the rights of Government thus transferred? In their Proceedings, dated 2nd December 1864, No. 7,743, the Board have gone into the question fully. There they have clearly proved from the earliest records and standard works on Hindu Law that an individual right of property in land has been in existence from time immemorial; that there was limit put to the State demand against cultivators of land; and that Zemindars were only middlemen or "links between princes and peasants." If Government cannot eject a ryot or raise his demand arbitrarily, a Zemindar cannot do so. If Government had the right of eviction there would have been no necessity for Act X of 1870 for the acquisition of land required for public purposes. The existence of such words as "Mirasidars" and "Payakaries" is an irresistable evidence of the existence of individual rights of property in land.

I.—One of the objects of Regulation XXVIII of 1802 is the protection of tenants. 'If a ryot can be turned out of his holding there can be no protection at all.' What is the protection which the legislature intended to secure?

II.—Regulation XXX of 1802 has for its object "the security and comfort of cultivators," and with this object provides for making the terms of holding specific. Would the legislature attempt to pass enactments for the comforts and protection of ryots if according to the law or usage of the country they had no right in the soil? The legislature would have in that case passed an enactment defining such right before attempting to secure comforts which depend on the right.

III.—It must therefore be admitted that the above Regulation of 1802 recognize the existence of the right of ryots in land.

27. Let us assume for the sake of argument that a Zemindar can turn a ryot out of his holding at the end of a fasli year, and see whether such assumption is consistent with the provisions of the Rent Act of 1865 which is passed in lieu of the Regulation of 1802.

I.—Section 3 provides that landholders "shall enter into written agreements with their tenants." If this provision is not conformed to, Sections 7 and 13 bar them from recovering the rent by a summary process. In Regular Appeal No. 131 of 1872 the High Court decided that this prohibition applies also to regular suits before Civil Courts. If a landholder has the right of eviction he can recover by means of that right what he cannot recover by a summary or regular suit. The fear of being deprived of the land will operate upon the tenant and drive him to pay the rent and even more if the landholder insists. It is only in the case of temporary tenants and renters who have no right in the soil and who do not therefore care to keep or lose the land the provisions referred to would be useful to landholder as they must otherwise lose the rent for the year. Is it reasonable to suppose that the legislature intended to facilitate the collection of rent from such temporary tenants only?

II.—Section 5 prohibits landholders from levying any unauthorized tax under any name or under any pretence. But this prohibition would be of no avail under the assumption in question. For Clause 4, Section 11, authorizes landholders to arrange their own terms of rent "in the case of immemorial waste lands and of lands left unoccupied either through default or voluntary resignation." Under the same clause landholders can raise sist in cases where additional value is imparted by works of irrigation or other improvements, but with the sanction of the Collector.

In Special Appeal No. 546 of 1868 the High Court have ruled that it is not sufficient for a landholder to improve the land at his own expense, but that he must before attempting to raise the rent obtain the sanction of the Collector to do so. Now if a Tahsildar wants to raise the rent he need not spend anything for improving the land or take the trouble to satisfy the Collector that his proposal is just. All he has to do is to ask the tenant to pay what he likes, and if he fails or threatens him with a suit under Section 5, file a suit for ejectment. The consequence will be that the ryot will either quietly pay what is demanded, or when ejectment is allowed the landholder can deal with the land as "unoccupied" and charge on it any rent he likes and give it back to the same tenant at that enhanced rent or to any others. Section 5 can thus be rendered quite useless.

III.—The latter part of Clause IV, Section 11, quoted provides that puttas granted by a landholder at lower rates are not binding on his successors unless they are granted for certain particular purpose, such as buildings or improvements by clearing jungle, &c. Does not this imply that puttas given at proper rates are binding? If so, how can the landholder eject at his will?

IV.—Section 6 provides that "puttas and muchilkas shall be regularly signed and registered by the Curnam" of the village. There is no penalty provided in the Act for omission to conform to the provision. The putta and muchilka referred to do not seem to refer to the putta and muchilka exchanged between Zemindars and their renters, or the putta and

muchilkas between a ryot and his tenant. If in a Government village a Curnam refuses to sign or register putta and muchilka between ryots and their tenants, he cannot be compelled to do so. Where is he to register such documents? The village accounts simply provide for the registry of lands held directly from Government. There is no provision for the registry of lands leased out by Government ryots. In the same way Curnams of the Zemindari tracts keep accounts of lands held by the Zemindar and not of lands leased out by the Zemindari ryots to their tenants. It is clear therefore that the puttas and muchilkas referred to in Section 6 are puttas and muchilkas exchanged between Zemindar and his ryots or a Zemindari renter and the Zemindari ryots, because in this case the Curnam is bound to keep accounts of such lands and is liable to be prosecuted by the Zemindar if he fails to keep regular accounts. What is the use of a provision like this if a Zemindar can change his tenants as often as he liked? It is clear that legislature intended this section to apply chiefly to annual puttas as under the Indian Registration Act VIII of 1871; the registration of leases within one year is optional, while the registration of leases for more than one year is made compulsory.

V.—When a landholder refuses to give putta, tenant can enforce the issue thereof under Section 8, while the landholder can under Section 9 enforce the acceptance of putta. These sections must refer to a system of holding where the duration of tenancy is unlimited. For there can be no claim for the issue or acceptance of a putta after the limited period. A renter or temporary tenant who holds for a specific time cannot claim the continuation of the tenancy after that specific time. Nor can a landholder force him to keep the land against his will after that period. What then is the system of holding where the duration of tenancy is unlimited? There is in fact no other than the Ryotwari system already described in the Revenue Administration Report of 1855-56 quoted in paragraph 15.

VI.—It is not Sections 8 and 9 alone which unquestionably indicate the existence of such a tenancy. The latter part of Section 12 which Mr. Justice Holloway comments on distinctly points to the same system. It provides that tenants shall "be *allowed* to relinquish their lands *at the end of the Revenue year* by a writing to be signed in the presence of witnesses or *at any other time if the landholder is willing to accept the relinquishment.*"

Here again the tenancy referred to cannot possibly apply to the holding of the temporary tenant or renters who hold for limited periods. For where the tenancy is for a limited period, the tenant is bound to keep the land till the end of that period according to the terms of the contract in each case which may be for a portion of a Revenue year, or only one Revenue year, or a longer period consisting of several Revenue years.

If the tenancy were terminable at the end of every Revenue year the provision in question would be quite unmeaning. Because what is the meaning of providing for the determination of a tenancy at the end of a year if by virtue of the contract of such tenancy it is liable to terminate at the end of a year? What is the good of providing that a tenant can relinquish *at any other time than the end of a Revenue year* if the landholder is willing to accept the relinquishment? If both parties of a contract agree to terminate it, there is no necessity for any legal enactment to sanction such determination. The provision in question is clearly applicable therefore only to tenancy of unlimited duration and is intelligible only on that supposition.

It simply assumes that the ryot holds without any limit of time; that he is not however bound to keep all the land permanently without any option of surrendering the whole or a portion of his holding according to the vicissitudes of season and his own circumstances; that if he wants to resign he must resign only at the particular time, viz., at the end of a Revenue year; but that if he wants to relinquish at any other time he must obtain the consent of the landholder. When the relinquishment is made at the end of a fasli it is not necessary to obtain the consent of the landholder. A time is fixed for each district for presenting relinquishments so as to admit of other ryot taking up the lands, securing thereby the interest of landholders as far as possible consistently with the rights of cultivating ryots.

VII.—Mr. Justice Holloway observes that it would be curious if one of the parties to the contract, viz., tenant, can terminate the contract, and the other, viz., landholder, can never terminate. It is not however difficult to conceive such contracts. Government, for instance, have the right of soil throughout the country. But they cannot afford to employ direct agency to cultivate all the lands; and for their own convenience and profit, which is at the same time a source of advantage to ryots, lease out the lands, fixing a proper share of the produce as State demand or lord's share, and leaving a due share to the cultivator as ryot's share in return for the expense and trouble of cultivation. The produce of the land depends on the exertion of the cultivator who would improve the land only if he has a permanent interest in it, and the Government accordingly give him a permanent right; but they do not bind him to hold it for ever, because if circumstances render it difficult for him to hold, it is desirable to allow others to take it up. Hence the option of relinquishment is given to him. Here is a contract where one party to it has the right to terminate at a particular period while the other has not. There is nothing curious or out of the way about it as observed by the learned Judge. In fact, it is a contract very useful and absolutely essential for the prosperity of the country, and why should not such a contract be applicable to Zemindars who stand in the position of Government in regard to ryots for the purposes of cultivation, &c.

VIII.—Landholders are also empowered to terminate the tenancy under certain circumstances. Section 10 provides for ejectment when tenants fail to receive putta and Section 41 when they fail to pay the rent. Section 12 lays down that landholders "are not empowered to eject tenants from their lands *except by a decree of a "Civil Court"* or *under the provisions of Sections* 10 *or* 41 *of this Act.*" The allusion in this section to the power of the Civil Courts to eject in addition to the two sections which specially provide for ejectment appear to have given rise to some doubt and difference of opinion. The late Chief Justice concludes that the provisions of Sections 10 and 41 only provide a summary mode of redress, while Section 12 leaves the matter for determination in a regular suit by the application of a general law to the agreement of parties in each case. Mr. Justice Holloway observes that the two Sections, 10 and 41, simply contain provisional remedy, and that Section 12 assumes that "Civil Courts can oust a tenant on grounds wholly beyond the scope of the Act." What can be the grounds of ejectment "beyond the scope of the Act?"

The High Court formerly held that the absence of putta and muchilka was not a bar to suits in Civil Courts, but that it was only a bar to summary suits under the Act. This question was however considered in a full bench in 1874, and it is stated that the High Court then came to a contrary decision,* viz., that the absence of putta and muchilka was a bar to Civil Suits also. But the Judges were not unanimous. Mr. Justice Holloway dissented. Under his own interpretation of the law a landholder can in the absence of putta and muchilka sue to eject his defaulting tenant before the Civil Courts, and this may be considered as one of the grounds "wholly beyond the scope of the Rent Act." The provision for ejectment under decree of Civil Court may have been intended to meet such or unforeseen difficulties.

* Regular Appeal No. 131 of 1872 already entered.

IX.—Assuming that Sections 10 and 41 are only provisional, does it necessarily follow that there is one law to guide Revenue Courts and another law for Civil Courts? It must be admitted that both are bound to decide according to the law or custom of the country. When a landholder refuses "*to grant such a putta as his tenant was entitled to receive,*" the Collector must under Section 8 direct its issue. The Collector arrives at the decision in a summary suit. Can Civil Courts overrule his decision if it be such a "putta as the tenant was entitled to receive?" There can be no question of law involved in such a case. The Civil Courts can only deal as a question of fact and reverse the decree if there was any error of material facts. If the law is such that a Collector can enforce the issue of putta and the Civil Court can eject the tenant at the same time, such law must be a source of great mischief, and it cannot be supposed that the legislature intended such mischief. It is difficult to understand that if the landholder had the right of

ejectment on several grounds why the law should speak of only two grounds. On the contrary, the definite provision of eviction on certain specified grounds can be logically taken to exclude ejectment on other grounds; and, under the circumstances already stated, the allusion to the powers of Civil Courts to eject cannot be taken to imply or reserve unlimitted power on the part of Civil Courts to eject.

X.—The detailed provision in Section 4 as to what a putta should contain and the rules in Section 11 for the decision of disputed rates of rent evidently contemplate a permanency of holding. It would be simply absurd to suppose that legislature would enter into so many details if all tenants were intended to be treated as mere tenants at will. The very fact that in Clause 4, Section 11, the legislature allows landholders to make their own terms with the tenants as regards immemorial and unaccepted lands, implies that they cannot arbitrarily deal with occupied lands. This is a very valuable and wise provision. It gives landholder the means of improving his income by extending cultivation on such terms as they may find profitable to themselves, while it secures ryots from any arbitrary taxation on their occupied lands.

XI.—Section XII of Regulation XXX of 1802 enacts that puttas executed for one year "shall be renewable at the expiration of the fasli, but shall be considered in force until renewed. Unless puttas be renewed within two months after the commencement of the ensuing fasli, they shall be considered in force and binding on the respective parties." In the following section, 13, it is provided in cases of sales that "such puttas as may have been granted by the former proprietors shall cease to have effect at end of the fasli in which such lands may be sold, and new putta shall be issued by the purchasers of such estates from the commencement of the following fasli."

The meaning of these two sections is perfectly clear. They mean that the putta given in one fasli is to be continued for next fasli, and when the estate is sold the purchasers must issue the putta accordingly from year to year. Does not this lay down the obligation of landholder to continue putta from year to year, and can this provision be consistent with the supposition that a landholder can terminate the tenancy at the end of a fasli year?

Mr. Collet observes in regard to Section 12 that "the legislature contemplated that the term of the new putta might be different from that of the prior putta. The rent for instance might be greater or less; otherwise, if in no case could the rent once ascertained and entered in a putta be afterwards enhanced, where was the use of Section 12?" The legislature does contemplete a change of holding by the option given to ryots of extending or diminishing the *extent* of land and of availing themselves of the irrigational advantages. But it does not necessarily follow that the legislature does contemplate a change by enhancing the *rates* of rent as Mr. Collet seems to assume. If legislature intended to authorize landholders to change the rates of rent the sections containing rules for the determination of rents in disputed cases and the prohibition to exactions would be useless. It is clear therefore that Mr. Collet overlooked the provision regarding rates as well as the principles of the Revenue system which gives tenants the option of extending or diminishing the extent of their holding.

Vide enclosure in Board's Proceeding, dated 2nd December 1864, No. 7,743.

XII.—In Clause 7, Section 34, of Act XXVIII of 1802, the following passage occurs:—

"Where defaulters may be lease-holders or other tenants having right of occupancy only during payments of certain rents *without right of property or possession*, the proprietors of whom such tenures may be held, or the former or other person to whom such proprietors may have leased or committed their rights, shall have the right of ousting the defaulting tenant from the tenure."

Here is a distinct and unmistakable allusion to tenants having right of possession which cannot be disturbed by landholder so long as certain rents are paid.

XIII.—There are many other sections not only in the Regulation of 1802 but also in the Act of 1865 which can be cited. But the foregoing seems enough if, as appears to me, they are incompatible with the assumption that a landholder can eject his tenant.

28. The only objection which it is difficult to meet is that raised by Mr. Justice Holloway based on the declaration of Bengal in 1859, that a right of occupancy should arise on a holding of a particular character for a particular time. The tenure of land in Bengal is different from that of this Presidency. If it be admitted that the Madras Regulations are not opposed to the right of occupancy of ryots, the declaration necessitated by the state of things in one Presidency will not affect the question in another Presidency where the state of things does not exist.

And the concluding remarks of the learned Judge, I may add, are by no means absolutely opposed to the permanancy of tenant's right of holding, because he observes that there is nothing in the *written law* which prevents a landholder to terminate the tenancy at his will *exercised in accordance with his obligations*. If there is no *written law* to settle the question the *custom* will decide it; and the landholder is supposed to exercise his right not arbitrarily but according to his *obligation*.

29. All I have stated may be briefly given as follows:—

(1.) That the terms "landholder," "tenant," and "putta" not being correctly defined cause some misapprehension.

(2.) That there is a long established custom in the country whereby the duration of the tenancy under annual puttas is unlimitted, terminable only by tenants at the end of a Revenue year and by the landholder only when the rent is not paid or the tenant refuses to exchange putta and muchilka.

(3.) That the existing law contains unmistakable allusion to such tenancy.

(4.) That the nature of the tenancy which formed the subject of the decision of the High Court is different from that of the annual putta which cannot therefore be affected by such decision:

(5.) That the decision in question does not however lay down an absolute doctrine, as both the learned Judges who took part in the decision modify their remarks by allusions to the custom of the country, which, if judicially established before them, would have induced them to come to a contrary decision

(6.) That competent judicial office of old time recognized the existence of such general custom.

(7.) That, finally, the doctrine that a landholder can terminate the tenancy at his will, if assumed as absolutely correct, leads to *reductio ad absurdum*.

30. I venture therefore, though with much diffidence, to submit that, as the law and custom now stand, a ryot cannot be arbitrarily ejected, and there is no necessity for any material amendment of the existing law in respect to the point at issue.

31. There is another decision of the High Court in Regular Appeal Nos. 160 and 161 of 1870 passed in February 1871, or about two months before the decision in question in Special Appeal No. 7 of 1870, which requires special notice. In that case a landholder sued to recover enhanced rent on dry lands irrigated from wells excavated by tenants at their own expense, and the High Court decreed in his favor, observing that "if a tenant proposes to improve the land which he occupies he should secure the advantage of such improvements by a contract with his landlord." This decision is, in my opinion, a really dangerous one. It seems to be an absolute and unconditional decision, and all the Subordinate Courts will be bound by it.

32. It appears to me that the question has not been properly put before the learned Judges. I would therefore suggest that the result of the present inquiry may be submitted to the High Court for their full consideration and professional opinion as to the right of tenant under the present state of things and the necessity for any amendment; and that if they decline to pass an opinion on the ground that the question should be judicially brought before them, Government may take up a case in point which may be pending in any of the districts, instructing a competent Pleader to conduct the same, adducing all the evidence and arguments referred to, so that eventually the case may be decided by a full bench of the High Court.

33. If any application to the legislature is necessary, it is for an Act to make it compulsory on Zemindars to introduce a regular system of demarcation, survey, and settlement subject to the approval of Government, as regards rates, &c., and under such limitation as regards time, &c., as may be warranted by the circumstances of each estate. The legislature has made provision for the demarcation of Government Taluqs, but none for Zemindaries. Until some steps in this direction are adopted all attempts to secure the comforts of Zemindari ryots must prove ineffectual.

(True Copy.)

(Signed) F. R. H. SHARP,
Acting Collector.

ENCLOSURE No. 2.

In the Court of the District Judge of Nellore, Friday, the 28th day of November 1873.

PRESENT:

J. D. Goldingham, Esq., District Judge.

Regular Appeal No. 21 *of* 1873.

Batchupalli Basavaiah Naidu Garu... ... ... Appellant (Plaintiff).

Versus.

1. Jegarlapudi Pitchiah ... ...
2. Do. Subbaramiah ... ...
3. Do. Seetaramiah ... ...
4. Yellala Chenchu .. ..
5. Bayyapuriddi Buddareddigari Ramudi ... ...
6. Gunnari Guruvappah ... ...

} Respondents (Defendants).

Cross Appeal No. 37 *of* 1873.

Jegarlapudi Seetaramiah... ... ... Appellant (3rd Defendant).

Versus.

Batchupalli Basavaiah Naidu Garu... ... ... Respondent (Plaintiff).

Regular Appeals against the decree of the District Munisif's Court of Kavaly in Original Suit No. 640 of 1872.

These regular appeals coming on for hearing, the Court delivered the following judgment:—

1. The plaintiff, who is the Tahsildar and renter of Pamur Taluq, attached to the Calastry Zemindari, sued to eject the defendants from the lands specified in the plaint, and to recover mesne profits for the current fasli which he estimated at Rupees 56-8-0.

2. The defendants 1, 4, 5, and 6 allowed the suit to proceed *ex-parte*.

3. The 2nd and 3rd defendants in their written statement alleged that the lands in question were included in the suit lease granted by the plaintiff to one Narsareddi; that lands No. 1 and a portion of No. 5 were held under a permanent lease, while No. 3 and the other portion of No. 5 were Inam lands; that they had always paid the rent fixed originally upon the lands; that they could not be ejected from them; and that plaintiff had over-estimated the produce claimed.

4. The District Munsif of Kavaly decreed that plaintiff should recover land No. 1 and nine muntas of land No. 5 east of the defendant's maniem, with Rupees 3 for mesne profits, and that he should pay the value of the well standing on land No. 1; each party were ordered to bear their respective costs.

5. Against that part of the decree which disallowed a portion of plaintiff's claim, he appealed in Appeal Suit No. 21 of 1873.

6. Third defendant appealed in Appeal Suit No. 37 of 1873.

7. I cannot go so far as the District Munisif in thinking that the Document No. 1 is a forgery, but I am of the same opinion as he is with regard to its construction, viz., that the words "for ever" have relation to the rent that has to be paid rather than to the duration of the

tenancy. Even assuming that the Tahsildar has a right to create a perpetual tenure of the lands in his division, I am of opinion that this document does not create one, because there are no express terms to be found in the instrument, such as Hindus generally use, showing that the tenancy was intended to be perpetual. Then as regards land No. 5, there is nothing to show on what tenure the defendants hold further than that they have paid a fixed rent for a long series of years. But I am of opinion that the plaintiff is not entitled to mesne profits, because it does not appear that he ever gave the defendants notice to quit at the commencement of the fasli, during which the mesne profits are claimed. Plaintiff has further withdrawn his claim to land No. 3. The result then is that plaintiff's claim to mesne profits is disallowed, but the rest of the District Munsif's decree is confirmed; each party must pay their costs in Original and Appeal Suit No. 21, but Appeal Suit No. 37 is dismissed with costs. The value of the well will be determined in execution.

(Signed) J. D. GOLDINGHAM,
District Judge.

(True Copy.)

(Signed) K. RANGAMANNAR,
Sheristadar.

(True Copy.)

(Signed) F. R. H. SHARP,
Acting Collector.

ENCLOSURE No. 3.

In the Court of the District Judge of Nellore, Saturday, the 6th day of December 1873.

PRESENT:

J. D. Goldingham, Esq., District Judge.

Regular Appeal No. 29 *of* 1873.

Kasavarazu Audinarayanappa ... ... Appellant (1st Defendant).

Versus.

Batchupalli Basavaiah Naidu ... ... Respondent (Plaintiff).

Regular Appeal against the decree of the District Munsif's Court of Kavaly in Original Suit No. 523 of 1872.

This regular appeal coming on for hearing the Court delivered the following judgment:—

Plaintiff, who is the Tahsildar and renter of the Pamur Taluq, attached to the Calastry Zemindari, sought to eject the 1st defendant from thirteen patches of land situated at Vinjamur, alleging that the defendant entered into no agreement with him regarding his tenancy.

2. The 1st defendant denied plaintiff's right to eject him, and alleged that the lands in dispute were included in the sub-lease granted to one Nagareddi, and that the same were held by him (1st defendant) under a permanent lease.

3. The 2nd defendant, who had been included in the suit at his own request, claimed the wells on the lands in dispute under a gift from the ancestors of the 1st defendant.

4. The District Munsif of Kavaly decreed the lands to the plaintiff subject to his paying the defendants the value of the wells, to be ascertained in the execution of the decree. First defendant was ordered to pay half of plaintiff's costs.

The remaining costs were ordered to be borne by the respective parties.

Against this decree 1st defendant appealed.

Judgment.

I regret this decision exceedingly, but the decree appealed against is founded upon the strict law of the country as declared by the highest authority. Formerly there was an idea in the country that a tenancy properly created entitled the tenant to the right of occupancy for the

purpose of cultivation until default in payment of the stipulated rent at the time it became due, and that such a tenancy could only be determined by the landlord's acceptance of a surrender by the tenant, but the late Chief Justice at page 171, Volume VI., of the Madras High Court Reports, has declared that the judgment in the case enunciating this doctrine went too far in laying down the rule as to Puttadar's right of occupation in these broad terms. In this case, although the 1st defendant has held for seventy-three years, he has not shown that he holds under a permanent lease. Document No. 1 has been rightly construed by the District Munsif, and it is clearly a lease from year to year, determinable at the close of any particular fasli. The District Munsif was equally right in holding that the Diwan of Rajah of Calastry could not be examined as to his interpretation of the lease.

As to the other question the District Munsif has shown that the plaintiff is the present landlord and not Nagareddi. Indeed, the evidence is quite clear on the point. The appeal must therefore be dismissed with costs.

(Signed) J. D. GOLDINGHAM,
District Judge.

(True Copy.)

(Signed) S. VENKATARAMANAIYA,
Nazir for Sheristadar.

(True Copy.)

(Signed) F. R. H. SHARP,
Acting Collector.

ENCLOSURE No. 4.

From K. BHASHIKACHARLU, Tahsildar, to the Acting Collector of Nellore, dated Kavaly, 15th July 1876, No. 67.

WITH reference to your order, No. 1,457, dated 24th May 1876, contained in the foot-note to the Proceedings of the Board of Revenue, dated 28th March 1876, No. 851, I beg respectfully to offer my observations, &c., as follows.

2. I have also perused the Proceedings of the Madras Government, Revenue Department, dated 13th March 1876, No. 131. A perusal of all these papers points to the necessity of recommending an enactment for better securing the right of occupancy to tenantry of Zemindars, &c., and the Collectors are requested through the Board to r[illegible] if there have been any cases of ejectments, &c., and to what extent, since the passing [illegible] judgment of the High Court, dated 1st May 1870, in Special Appeal No. 9.

3. This taluq contains twenty-three Zemindari and eighteen Shrotriem villages, besides the minor Inams and Kandrigas in Government villages. The former belong to the Calastry and Mutyalapad Zemindars as shown in the margin, and I confine my remarks to what have been within my knowledge since I came to this taluq which is somewhere about the middle of 1871.

22 Calastry.
1 Mutyalapad.

4. Besides the information that has been reaching me from time to time, I have collected all that could be had in the District Munsif's Court here, and the total number of instances in which suits for ejectment have been brought from 1871 down to the present period is seventeen, or three suits on an average per year.

5. Batsupalli Basamappa Naidu (now deceased) who was the Ijaradar of the Calastry Zemindari villages has been the plaintiff in sixteen out of the above seventeen cases, and Kasavarazu, Chinna Sashappah and Audinarayanappa in the remaining one.

*563 of 1875.

6. The particulars of all these cases are, for the purpose of one glance, given in the subjoined abstract:—

Abstract of Suits on the File of the Kavaly District Munsif's Court.

Residents of Defendants.	Year.	Number of the Suit.	Amount of the Suit.	Amount decreed.	Nature of the Decree.
			Rs.	Rs.	
Lingasamudram of Kandukur Taluq	1871	380	350	(*a*) 30	(*a*) To make over the land to the plaintiff on payment by him the decreed amount to the defendants.
Do. do.		384	250	(*a*) 250	
Anantaveram, Kavaly Taluq...		385	300	(*a*) 400	
Lingasamudram, Kandukur Taluq		386	100	(*b*) ...	(*b*) Land to be made over to the plaintiff.
Do. do.		413	60	(*c*) ...	(*c*) The defendant must obtain a putta from the plaintiff, or must make over the land to him.
Samidapad, Udayagiri Taluq		414	200	(*b*) ...	
Garimanapenta, Udayagiri Taluq... ...		412	500	(*d*) ...	(*d*) Razinama filed to obtain a cowle from the plaintiff.
Anantaveram, Kavaly Taluq...		65	956	(*a*) 400	
Chintalapallem, Atmakur Taluq	1872	523	560	(*b*) ...	
Seetarampuram, Udayagiri Taluq		573	400	(*d*) ...	
Vingamoor, Udayagiri Taluq		605	96	(*b*) ...	
Seetarampuram, Udayagiri Taluq		616	90	(*a*) ...	
Do. do.		640	119	(*b*) ...	
Anantaveram, Kavaly Taluq	1873	923	...	...	
Do. do.		924	5½	(*b*) ...	
Vingamoor, Udayagiri do.	1874	333	200	(*b*) ...	
Chintalapallem, Atmakur Taluq... ...	1875	568	126	(*d*) ...	

7. In the above sixteen brought by the Agent of the Calastry Zamindar, Suit No. 923 of 1873 was for damages alleged to have accrued by some act of the defendant in reference to the backyards in his (defendant's) possession from time immemorial, and which backyard was claimed by the Ijaradar as forming part of an adjoining garden land already adjudged to him in Suit No. 65 of 1872, and another, viz., 924 of the same year, for obtaining the values of certain tumma trees, together with the site occupied by them, on the ground that it forms a part of a neighbouring land under cultivation, though it was argued by the defendant as his backyard just in the same way as was done by the defendant in No. 923.

8. The lands concerned in these have been in the occupancy of the tenants for more than sixty years on an average, though some have been even for a century or two.

9. The causes attributed to the institution of these suits are various, and they appear to have been brought against only some select persons and in several villages of this, Atmakur, Udayagiri, and Kandakur Taluqs. The enhancement of tax is often shown as the ground for their institution, but this I came to understand is only for outward show; for if it was considered necessary to raise the tax of one or two particular individuals in a village, why not the same principle be applied to all? Their demand of higher rate of assessment must originate either from repairs done to the tanks or from sinking new wells for the benefit of the community at large, or from any extra assessment laid on the Zemindar by the Government, or from any special works done for the improvement of lands. If these are the real causes, there is an easier and much less expensive mode of enforcing the payment by having recourse to Sections 9, 10, and 11 of Act VIII of 1865. In the cases referred to it does not seem that the landholder resorted to the provisions of the Act, nor any improvements, &c., are reported to have been made either in respect to the special individuals or in the interest of the public. The real causes therefore as stated to be by many are the refusal of payment of certain Katnams when the ryots have occasion to visit their superiors; the non-payment by them of the Katnams paid by the Ijaradar to the Rajah when the latter is visited by the former, the same being apportioned amongst them; the refusal to pay a tax known either under the denomination of "Sunkerachari Pannu" or "Marriage Pannu" or some such thing like that; the refusal to make a division of the produce of any one land that may yield more than usual at the expense of the cultivator, contrary to the terms for payment of the fixed rent or the mucktah; and, finally, the exhibition of marks of independence on the part of a tenant or zealously on the part of the landlord or rather the immediate ruler. If they have recourse to the provisions of the law, the tenants might certainly

urge in their defence what actuated or actuates the issuing of a new putta, and the suit might fall to the ground on a very careful inquiry. In lieu of this suits are brought directly in the Courts for rejecting them, the Village authorities as respectable witnesses are made to hear evidence in the matter, numerous expenses are thrown on their heads, and thus the tenants are bowed down by fear and reduced to needy circumstances.

10. The tenants, or rather ryots, are made dependent on their lands from antiquity. The Regulations XXV, XXVIII, and XXX of 1802 provide amply for the preservation of their right of occupancy to such lands, and point out at the same time how far the landlords can interfere with the land thus possessed. Even the Government which have sole control over these landlords and the country have not framed such rules as to take away the land from their ryots unless they are formally resigned or taken away for arrears of revenue. The landlords, *a fortiori*, to whom a right for the enjoyment of a portion of the produce from such lands is delegated, cannot deal with them in an arbitrary manner, and to suppose that they have power to do so is not only curious but also repugnant to law.

11. Out of the numerous cases mentioned, only in Suit No. 65 of 1872 the tenant went as far up to the High Court for special appeal, but the decision of the Original Court was upheld as it had been already confirmed by the Appellate* Court (*vide* Special Appeal No. 301 of 1873).

* Regular Appeal No. 50 of 1872.

12. In Suit No. 568, the plaintiffs live in Chintallapolleru of Atmakur Taluq, and it is a Shrotriem village in the tract of the Calastry Zemindar. Stirred up by the example set by their direct superior, Basamappa Naidu, these plaintiffs also betook to annoy the tenants with a demand of increased rent. Though they held a permanent lease, yet the poor and mouthless ryots, looking to the many instances of ejectments pointed out, razed the suit and placed themselves at the mercy of the Shrotriemdars.

13. Pamur Taluq, to which the above and numerous other villages stand attached, is the largest Revenue yielding division to the Zemindar of Calastry. The whole of this is rented out to one individual once in five years, and the latter again sub-rents each or group of villages either annually or otherwise. The renter and sub-renters strive and apportion the costs that may have borne by them in procuring the Ijara among the ryots, and this creates confusion and tumult in the latter. In the village of Vinjamoor, in the Udayagiri Taluq, the ryots planted betel gardens in dry lands several years ago under the irrigation of private wells and remained in possession thereof, not much molested until a very recent period, viz., about two or three years back, when instead of about 40 Rupees per gorru, Rupees 100 or 120 or so forth were demanded by the Ijaradar contrary to mamool, but that not having been complied with, they were threatened with suits of ejectments, and they were thereupon obliged to demolish ten or eighteen splendid and fruitful gardens. There may be some other cases of malversation of this nature, but as the indigent ryots have little or no opportunity to represent their grievances to their merciful ruler, as either he or the Diwan has not made a tour in this division for the last ten or fifteen years, they are made to look to their direct all-managing renter and sub-renters who are constantly changing, for good and bad; hence these so many civil prosecutions and ejectments, and their condition is being made more and more deplorable. Should any venture to complain to any Government officials regarding any matter, the complaint is either brought to nothing or does not come to proof positively, since the witnesses, &c., are unwilling, or part willing, to speak the truth in consequence of the people at large being kept under fear and threat.

14. Section 7 of the Act provides that no suit is to be brought unless puttas and muchilkas have been exchanged or tendered or dispensed with. The last article that the parties have agreed to dispense with the said two very important documents is in almost all the cases taken advantage of by the landlords, as it serves many a loophole to cover all defects when suits are instituted in the Courts either for ejecting or for recovering rent, and much mischief is thereby committed or capable of being done. This provision is therefore, in my opinion, needed to be struck off.

15. In very many cases, as far as my experience goes, there is no exchange of puttas and muchilkas, and this must therefore be made absolutely necessary, and it must further be enacted that no suits in Civil Courts shall be brought or admitted unless all the formalities for offering or accepting the puttas, &c., had been previously undergone, and the decision of the Collector had been obtained in a summary suit brought before him on the point.

16. In conclusion, I beg to state that, if the fields are demarcated, this will also avoid many disputes and institution of suits similar to those already pointed out in paragraph 7 of this report.

(True Copy.)

(Signed) F. R. H. SHARP,
Acting Collector.

Exd. W. J. Lewis.

From J. R. DANIEL, Esq., Acting Collector of Cuddapah, to the Acting Secretary to the Board of Revenue, dated Mydukur, 19th September 1876, No. 238.

I HAVE the honor to reply to Board's Proceedings, dated March 28th, 1876, No. 851.

2. The Divisional officers all report that no cases have been brought by a landlord for ejectment of his tenant, so that the ruling of the High Court has had no effect; in fact, it does not appear to be known.

3. Mr. Benson, the Head Assistant Collector, notices the effect of the ruling in the Salem District where he acted as Head Assistant in 1875. He writes: "During 1875 I acted as Head Assistant in Tripatore for five months, and during that time decided about 100 suits under the Act. The majority arose in the Kadatur mittah, and nearly all were to enforce exchange of puttas and muchilkas, or for ejectment of tenants."

4. This ruling however does not appear to have been followed, and Mr. Benson strongly disapproves of this interpretation of the law.

5. The present ruling of the High Court has had no effect in this district, and I doubt whether it goes so far as to lay down that every tenant can be ousted at the caprice of his landlord; there was a special contract in the case quoted.

Exd. W. J. Lewis.

From J. H. MASTER, Esq., Collector of Bellary, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 27th August 1877, No. 681.

With reference to the Proceedings of the Board of Revenue, No. 851, dated 28th March 1876, I have the honor to state that there are no zemindari lands in this district. There are jaghires, shrotriems, and inams, but no complaints of ejectment of tenants by their landlords have been received.

2. The High Court ruling referred to is not generally known, nor has it been acted upon by landholders, but Inamdars generally resume their lands from tenants on the expiry of leases.

3. The system of issuing puttas does not generally exist in shrotriem and jaghire villages, and where it exists, if a non-resident ryot takes up land for some stipulated period, he does not demur to giving it up when the term has expired. In cases of resident ryots, on the expiry of leases, they are renewed for a further period.

Ex. L. A. F. Goodall.

From W. S. FOSTER, Esq., Acting Collector of Kurnool, to the Acting Secretary to the Board of Revenue, dated 7th July 1876, No. 304.

WITH reference to Board's Proceedings, No. 851, dated the 28th March last, calling for a report as to whether the results, anticipated by the Board in the concluding paragraph of their Proceedings, No. 3,876, of the 8th September 1871, recommending an enactment for securing the right of occupancy to tenantry of Zemindars, &c., have ensued, and to what extent, I have the honor to inform that the High Court's decision referred to by the Board has not apparently become known to any single landlord in the district, and that consequently the results anticipated have not ensued.

2. The Head Assistant Collector believes that, if these landlords had known the decision, they would be unrestrained, by feelings of fairness, from taking advantage of the law which might work injustice to the tenants, and give them (landlords) an opportunity to tyrannize.

3. I might state here, for the information of the Board, that no suit to eject a tenant has been instituted by a landlord up to now.

Exd. W. J. Lewis,

From R. J. MELVILLE, Esq., Acting Collector of Madras, to C. A. GALTON, Esq., Acting Secretary the Board of Revenue, dated 28th July 1876, No. 252.

With reference to the Board's Proceedings, No. 851, dated 28th March 1876, I have the honor to report that no case is come to my notice since the date of the Board's Proceedings of 1871 in either of the districts in which I have been employed of a tenant having been turned out of his holding on the strength of the judgment of the High Court under reference.

Vizagapatam and Chingleput.

2. The Deputy Collector of Madras who was asked to report on this subject states that he too has not heard of any such case.

Exd. W. J. Lewis.

From J. H. GARSTIN, Esq., Collector of South Arcot, to the Acting Secretary to the Board of Revenue, dated Cuddalore, 26th July 1876, No. 327.

In reply to the Board's Proceedings, dated 28th March 1876, No. 851, I have the honor to state that, having made the necessary enquiries, I find that the construction laid down in the High Court's decision in Special Appeal, No. 9 of 1870, regarding the power of landlords to eject their tenants at the end of a Fasli, is not generally known to exist, in this district, and has not been taken advantage of by any one.

2. The reports* received from Divisional Officers are to the same effect, and copies are herewith submitted.

* Letter, No. 344, dated 21st July 1876 from the Sub-Collector; letter, No. 325, dated 7th July 1876, from the Head Assistant Collector; letter, No. 494, dated 5th July 1876, from the Deputy Collector, general duties.

3. I may mention that in respect of estates granted by the Nawab, the right of occupancy is not considered to exist, while it is so in estates granted by the British Government.

Enclosure No. 1.

From C. SRIBALIAH, Deputy Collector, General Duties, South Arcot, to the Collector of South Arcot, dated Tricalore, 5th July 1876, No. 494.

In reply to your endorsement, No. 485, dated 30th May 1876, on the Board's Proceedings, No. 851, dated 28th March 1876, I have the honor to inform you that, as far as I have been able to ascertain, there was no instance in which the ruling adverted to was availed of and tenants ejected by a Zemindar or Shrotriemdar in this Division.

Apparently the ruling of the High Court is known to nobody here.

(True Copy).

(Signed) J. H. GARSTIN.
Collector.

Enclosure No. 2.

From J. THOMSON, Esq., Acting Head Assistant Collector of South Arcot, to the Collector of South Arcot, dated Tindivanum, 7th July 1876, No. 325.

In answer to your foot-note, No. 485, to the Proceedings of the Board of Revenue of 28th March 1876, No. 851, I have the honor to state that neither here nor in Salem, where the Zemindary form of tenure largely exists, have I, officially or otherwise, known or heard of any one instance of a land-holder's use of the power held legal by the High Court, of determination of his ryots' tenure at the end of the Fasli year. Where the creating contract has no stipulation to the contrary, such power might occasionally be used to get rid of an unpleasant tenant or to substitute a dependant, but these occasions would be but few, and while the rates for land under land-holders are not increasable save with the Collector's sanction upon additional value imported, there can, as a general rule, be no advantage to be procured by getting rid of one tenant while another of the same character must be substituted on the same conditions.

(True Copy).

(Signed) J. H. GARSTIN,
Collector.

Enclosure No. 3.

From J. WALLACE, Esq., Acting Sub-Collector of South Arcot, to the Collector of South Arcot, dated Ammapetta, 21st July 1876, No. 344.

With reference to your endorsement, No. 485, dated 30th May last, on Revenue Board's Proceedings, No. 851, dated 28th March last, I have the honor to report that I have not been able to find that the summary method of ejecting a tenant by withholding the puttah has been adopted in this Division, as the land-holders under Section 3 of Act VIII of 1865 were evidently unaware of the ruling of the High Court in their judgment in Special Appeal, No. 9 of 1870, quoted in Board's Miscellaneous Proceedings, No. 3876, dated 8th September 1871.

(True Copy).

(Signed) J. H. GARSTIN,
Collector.

From H. S. THOMAS, Esq., Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Vallam, 24th January 1877, No. 287 :—

WITH reference to the Proceedings of the Board of Revenue, dated 28th March 1876, No. 851, I have the honor to report that there does not appear to have been a single case in this district in which landholders have refused to tender putta after the expiration of stipulated period, and thereby sought the ejectment of their tenants. Some of my Divisional officers say that the belief among the landholders is that they have no such right. I think, therefore, there is no reason to apprehend the High Court decision will be productive of any evils such as those contemplated in the concluding paragraph of the Board's Proceedings, dated 8th September 1871, No. 3,876.

2. To avoid all misgivings, it seems to me that the definition of the word "tenant" be made clearer than it is now. As the Board are aware there are in this as well as several other districts of the Presidency two classes of tenants, one having a permanent right of occupancy and corresponding with the Mirassidars in Government villages, and another consisting of tenants engaged by the landholder for a year or a term of years and called Porakudies. The rights of the former are generally evidenced by entries in the pymash and other accounts, and the Inamdars or Zemindars concerned who are entitled only to the Malewaram never dispute the ryots' title, and invariably exchange puttas and muchilkas with them under the provisions of Section 7 of Act VIII of 1865; and as for the latter class they have to be dealt with according to the terms of their engagements. If the engagements definitely specify the duration of tenancy, no difficulty arises, but in cases where they are indefinite and do not specify any term whatever, and where tenants have gone on holding the lands, such as the one on which the High Court decision is based, disputes frequently crop up, and the interests of tenants are likely to be seriously affected.

3. I think, therefore, that the right of occupancy should be clearly defined, and a term should be fixed after which such right accrues.

From H. SEWELL, Esq., Acting Collector of Trichinopoly, to the Secretary to the Board of Revenue, dated 15th June 1876, No. 161.

I HAVE the honor in reply to the Board's Proceedings, No. 851, dated the 28th of March last, to state that from the inquiries made I find that there has been no case in which a ryot was ejected or steps taken to turn him out of his holding in consequence of the High Court ruling quoted in the above Proceedings.

From R. W. BARLOW, Esq., Collector of the Chingleput District, to the Acting Secretary to the Board of Revenue, dated Sydapet, 20th June 1876, No. 374.

IN reply to Board's Proceedings, No. 851, dated 28th March last,* I have the honor to report that the ruling in question has been inoperative in this district simply because it is fortunately still unknown here; for I am bound to add that I am strongly of opinion, in which my Divisional Officers concur, that, if understood, it would be very generally acted upon by landlords, and the effect on the tenants would, I consider, be disastrous.

* Received 23rd ultimo.

From H. W. BLISS, Esq., Acting Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 12th August 1876, No. 300.

IN reply to the Board's Proceedings, No. 851, dated 28th March 1876, I have the honor to report that, so far as I can ascertain, the ruling of the High Court therein adverted to has been entirely inoperative in this district; no suit for summary ejectment of tenants having been filed by Zemindars, except quite recently when a few suits have been instituted by the Special Assistant Collector in charge of Ramnad, with the permission of the Court of Wards, as the only means left of trying the rights of Ramnad Zemindari tenants to retain waste lands and some topes of trees in Paumben island in their holdings without payment of rent.

From W. S. WHITESIDE, Esq., Collector of North Arcot, to the Acting Secretary to the Board of Revenue, dated Chittoor, 17th August 1876, No. 387.

WITH reference to Board's Proceedings, dated 28th March last, No. 851, I have the honor to report that I am not aware, nor are my Divisional Officers, that any such cases of ejectment as are referred to by the Board, that is, ejectment of tenants from lands by their landlords on the expiration of the term mentioned in the puttas granted to them (tenants), or at the end of a fasli year, have as yet occurred in this district. The cause of this inaction is reported to be the ignorance on the part of Zemindars and Inamdars of the ruling of the High Court on the subject.

2. I may add that, for obvious reasons, if the ruling were acted up to by landlords the result would be most mischievous and dangerous to the well-being of the country.

From W. LOGAN, Esq., Collector of Malabar, to the Acting Secretary to the Board of Revenue, dated Calicut, 25th August 1876, No. 235.

WITH reference to the Board's Proceedings, dated 28th March 1876, No. 851, I have the honor to inform you that no instance of the summary ejectment of a tenant by a landlord has ever come to my knowledge or that of my Divisional Officers. In fact the Madras Rent Recovery Act VIII. of 1865 has always been dormant in this district.

Exd. J. Tulloch.

From A. J. STUART, Esq., Acting Collector of Tinnevelly, to the Acting Secretary to the Board of Revenue, dated Melagaram, 8th July 1876, No. 431.

In reply to Board's Proceedings, No. 851, dated 28th March 1876, I have the honor to enclose a letter from my General Charge Deputy Collector with which I agree generally.

2. The effect of the ruling, as taken in the proceedings, has, I am glad to say, been *nil* in this district owing, I believe, chiefly to the idea being so totally new and strange to all parties concerned (who have for many generations acted and thought on an entirely different groove) that it has not apparently occurred to any one to attempt to quote this ruling or to demand action upon it.

3. It is very desirable that the opening thus accidentally discovered in the ship's side, if it be one, be at once repaired, otherwise it is quite enough to sink her in an unexpectedly short time; I recommend early legislation, if the meaning of the ruling is as supposed, and think that to put it off would be a wrong done to land-lords as well as to tenants by encouraging false hopes.

4. But it is, perhaps, worthwhile to consider whether the absence of any direct legislation to secure the tenants' rights does not leave the question, as a common law question, to turn upon what has always been customary in each case; no such defence apparently was set up by the tenant in the case referred to either before the Lower Court or before the High Court, and the High Court, in ruling as they did, may only have intended that, on the facts and evidence before them in that particular case, in which no such custom was set up or proved, they could only find that the relation of land-lord and tenant was, as usual, terminable annually a *primâ facie* conclusion, which would not affect future cases of a similar sort, provided it were known that the custom of holding ancestrally has to be pleaded and established, and that the ruling does not apply to cases where this is done.

5. On this view, it would seem unnecessary to legislate. Any such legislation would have to run somewhat thus—

All tenants who are, or are proved to be, ancestral or not liable to be ejected except for non-payment of rent or other just cause, shall not be ejected, a clause which would be, on the face of it, absurd—a sort of legislative circle, stating that the Courts shall not eject those who can prove themselves not liable to ejectment and no more. Such legislation would, I imagine, leave us where we are.

6. If this is so, any further legislation would open up a wide question, viz., whether legislation, which distinctly lays down, once for all, that every tenant has a tenant right to remain in, when once put in, on payment of a customary or reasonable rent, as found by the Collector, is the policy which Government wishes to pursue, and is or is not in accordance with the custom of the country.

Suppose a tenant's family dies out or the land-lord purchases his tenant right, he would still be bound, under such legislation, to put in a tenant at the customary rent, and would not have the right to dispose of the land, as he pleases, for the future. Either way of looking at the matter may be supported as reasonable for—

(1.) *European line of thought.*—It is reasonable that, when a tenancy falls in, a land-lord should do what he likes with the land on which no rights but his own exist.

(2.) *Consonant with Native ideas and Ancient Customs.*—It is reasonable that the Government should wish to preserve, by legislation, the condition of the ryotwari population of Zemindaries as they found it, viz., in a condition similar to that of Government villages. This cannot be preserved if a tenant makes his own terms whenever a tenancy falls in.

(3.) *Original Native practice.*—It is reasonable that a tenant should consider he has a saleable interest in the land, this he cannot well have if the land-lord has a claim when a tenancy falls in.

(4.) *English idea.*—It is reasonable that the land-lord should consider the tenant has none.

7. Legislation in the direction of No. 2 would require very careful consideration, because though it may be justified and may or may not be advisable, it is very questionable whether it would not be an invasion of existing rights and customs of land-lords as hitherto recognized by the Courts and even by the Rent Act.

Canmeester

So any legislation that involves such questions as (3) and (4) would require much caution and consideration, however desirable in some respects that a general rule on this point should be established.

8. Property seems to be in the act of passing from a feudal system of tenure to a system founded on that prevailing in England, and it is doubtful whether express legislation, which would either arrest this process and put back the country, where it was, in respect of land tenure, is advisable, or whether legislation, which would suddenly advance it much beyond the point it has reached, would be better, or whether it is the best policy to leave these matters to work out their own future, influenced only by the general tendency of English ideas, working through the judicial decisions on the merits of cases weighed and determined by minds more familiar with English social and business relations, than apt to realize the state of things that existed in feudal times and from which have sprung the relation of land-lord and tenant here as elsewhere.

9. On the whole, I think it is a delicate subject on which any attempt to legislate would lead to widely divergent opinions among those whose authority is considered highest, as to the direction legislation should take; and it is best, therefore, to let moderately well alone, always supposing that the High Court ruling referred to has the meaning suggested in paragraph (4). If this be the case, the only point on which I would recommend legislation is this; taking into consideration the origin of tenant right in this country and its history, I think it would not only be quite just but also advisable in any amendment of Act VIII of 1865 to put in a clause to the effect that, whenever the point is in dispute, the *onus probandi* of showing that a person admitted or proved to be a tenant of some sort is *not* a hereditary and permanent tenant, shall lie on the land-lord. I think the history of the country warrants this rule, and that the position of the tenants, as compared with that of the land-lords, in our Courts requires it.

10. The history of the country warrants it, because we know that formerly the tenants were dealt with whether by Government or by Native Princes or Poligars by villages, and that to deal with them by individuals is a modern innovation, also that in the village ryots were not liable to question at the hands of their land-lords, as to the permanence of their tenure, so long as they paid the stipulated rent. There was no custom of ejecting otherwise than for non-payment, and then only to find another tenant *to hold on the same terms.*

ENCLOSURE No. 1.

From H. SUBRAYER, Acting General Charge Deputy Collector, to the Acting Collector of Tinnevelly, dated Courtallam, 21st June 1876, No. 107.

WITH reference to your foot-note to the Proceedings of the Board of Revenue, dated 28th March 1876, No. 851, I have the honor to report as follows.

2. Since the operation of Act VIII of 1865, some of the large Zemindaries in this district, such as Chokampatti, Sivaghiri, &c., were under the management of receivers appointed by the District Court in the course of execution of decrees under Section 243 of the Code of Civil Procedure, Act VIII of 1859; some have been under the management of Court of Wards, such as Ettiapuram, Urkad, Singampatti, and Maniachi; and only a very few small ones have been managed by the Zemindars themselves. Thus it is evident that no sufficient opportunities were afforded to the important Zemindars to be aware of the decision of the High Court in the Tanjore Mattam case referred to in the G.O., dated 13th March 1876, No. 366, so as to use their power of ejecting their tenants.

3. Although that decision has not been widely known in the district, yet it appears that there have been several cases of ejectment under Section 10 of the Rent Recovery Act VIII of 1865, in the Uthumalai and Kulayaneri Estates. Besides these cases some civil actions seem to have been instituted by the Puvani Inamdar to oust his tenants in the village of Puvani.

4. It is a known fact that some of the Mofussil Judges decided in some cases that long possession by tenants should not be disturbed; but the High Court not agreeing with them decreed for ousting the tenants in reversal of the decrees of the Courts below. In these cases the

ryots, who had enjoyed the lands from time *immemorial*, having dug wells at *their own expense* and improved the lands a *great deal*, were ejected in a moment without any mercy whatever shown to them. It is, indeed, heart rending to witness the feelings of these poor helpless ryots.

5. The above section and the decision of the High Court; if allowed to remain in force any longer, would decidedly prove so injurious as to impoverish many of the ryots, and the result will be that they should emigrate to Ceylon and other coffee-growing countries where they can secure labor and to Travancore to live on the charity of the Maharajah of that State.

6. It is my strong opinion that no Zemin ryots would be safe, if ejectment of any sort under any circumstances be allowed, because the best qualified provision for ejectment in any law or ruling is quite enough to open a wide door for fraud and to enable our unprincipled and uneducated Zemindars and other land-lords to find loop-holes in the legislature with the aid of their crafty and time-serving agents and to crush down their tenants by fraudulent means.

7. It is an admitted fact that every Ryotwari Puttahdar is a master of his holding, being subject only to pay the Government dues. Even if he fails to pay the same, what is the consequence? He is not arbitrarily ejected like the Zemin ryot; but only steps are taken to recover the arrears due by him first by proceeding against his movables, and if the sale proceeds thereof are not sufficient to meet the demands made by Government, a portion of his land is attached and sold leaving the rest in his uninterrupted occupation and enjoyment. If any surplus is left in the sale proceeds after paying the Teervai, it is paid over to them at once, and it cannot at all be denied that this system is very conducive to the progress of agriculture and to the general welfare and happiness of the country. Any ryot may lay out freely any amount of money in the improvement and culture of his lands, as he is sure of the benefit of his labor and has further nothing to fear as regards the money spent by him, for in case of default of payment of kist, the Government does not deprive him of his lands but only follows the course above pointed out under Act II of 1864. Thus there can be only very little loss to the ryot if at all he is necessitated by circumstances to be put to any loss.

8. Now let us see what is the system prevailing in the case of Zemindari lands. The system is certainly very dangerous, as the ryots are liable to be turned out of their holdings at the whim and pleasure of their land-lords, notwithstanding they have spent upon the permanent improvements thereof a large sum of money and have brought them to flourishing conditions.

9. Hitherto these ryots were under the impression that they were not in a dangerous position, as long as they paid the rent due on their lands. But now after the ejectment in Uthumalai, Kulayaneri, and Puvani, &c., terror is, I believe, being created in the minds of the tenants, and no one would in future venture to spend even a single pie towards the improvement of his lands, as he is not certain whether he or his descendants will be allowed by his land-lord to enjoy the fruits of his labor and money. Some land-lords may be so cautious as to wait until their tenants bring their lands to good state and then invent some pretext or use some stratagem to oust the illiterate tenants from their holdings, while others devise evil against them and demand Nazirs of various kinds difficult of payment by them without selling their lands completely.

10. Thus it is clear that the condition of these miserable ryots are pitiable, I would therefore strongly advocate their cause and respectfully request for a legislative enactment to remedy the growing evil by declaring them to be permanent tenants and to be entitled to enjoy all the privileges of a ryotwari tenant.

(True Copy.)

(Signed) A. J. STUART,
Acting Collector.

Exd. T. O'Connor.

From A. WEDDERBURN, Esq., Collector of Coimbatore, to H. E. STOKES, Esq., Secretary to the Board of Revenue, dated 10th June 1876, No. 117.

I HAVE the honor to reply to Proceedings, Board of Revenue, No. 851, of 28th March last, regarding the ruling of the High Court on ejectment of tenants by Zemindars whether such ruling has resulted in ejectment.

2. No instances of such ejectment have come to notice in this district. It is very doubtful whether the ruling in question is known to any one.

3. There are only a few Zemindaris, and these of small extent, in this district.

Exd. W. J. Lewis.

Received 9 June 1876 (No. 1) J. R. Cockerell
Secretary

MISCELLANEOUS No. 2224. REVENUE DEPARTMENT.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 7th March 1879.

Read the following :—

No. 32.

From J. R. Cockerell Esquire
Commr, Nilgiris.

To The Secretary to the Board of Revenue.
Madras.

SIR,

With reference to Pros of the Board of Revenue No. 851 dated 28th March last communicating to all Collectors for report, Govt. Order requesting the Board to state whether the results anticipated in the concluding paragraph of their Pros recommending an enactment for securing the right of occupancy to tenantry of Zemindaris &c., have ensued, and to what extent, I have the honor to state that there are no Zemindaris &c. in this District.

Commr's Office
Octacamund 9 June 1879

Shares &c.
(Sd.) J. R. Cockerell

Recorded.

(True Copy + Extract)

(Sd.) C. A. Galtaw

Ag. Secretary

The Commrs. of Nilgiris.

(True Copy)

R. Gibson.

Ag. Secretary.

Copy of Rs. Ror. Nos. &c.
2224 of 7th March 1879
requiring letter from Court
of Litigation whether Rs. Nos
are no finality now in Ki
Ki Court.

Dated
Despatched } 188 .

SUBJECT.

PROCEEDINGS OF THE BOARD
OF REVENUE.

From C. T. LONGLEY, Esq., Collector of Salem, to the Acting Secretary to the Board of Revenue, dated Poolamputty, 15th November 1876, No. 301.

With reference to the Board's Proceedings, dated 28th March 1876, I have the honor to inform you that from the inquiries I have instituted it does not appear that tenure of the tenantry in the Zemindaries has been at all affected in any part of this district, as the judgment of the High Court referred to in Board's Proceedings under reply is not known, though, as remarked by the Sub-Collector, no doubt were the ruling known it would be a powerful engine in the hands of the Zemindar to get rid of any tenant who had made himself unpopular.

2. I consider that Act VIII of 1865 requires amendment, and that the tenure of the ryot holding under a Zemindar should be distinctly defined.

3. Replies received from the Divisional officers are herewith enclosed.

Enclosure No. 1.

From F. WILKINSON, Esq., Acting Sub-Collector, to the Collector of Salem, dated Denkenicottah, 29th July 1876, No. 451.

In reply to your Official Memorandum, No. 497, dated 28th July, I have the honor to state that the Judgment of the High Court in Special Appeal No. 9 of 1870 has in no way affected the right of occupancy of the tenantry in Zemindaries, &c., in the sub-division, and it seems still to be held by all such landholders that resident ryots have a right of occupancy as long as they pay the rents demanded from them.

2. I have, however, no doubt that, if the ruling of the High Court were known, many landholders would take advantage of it to get rid of refractory or troublesome ryots, and I am therefore decidedly of opinion that an enactment is required distinctly specifying what gives a ryot the right of occupancy. Act VIII of 1865 might at the same time be amended and rendered more clear and satisfactory.

(True Copy.)
(Signed) T. PRITCHARD, Dy. Collr.,
for Collector.

Enclosure No. 2.

From H. LeFANU, Esq., Acting Head Assistant Collector, to the Collector of Salem, dated Salem, 9th September 1876, No. 419.

With reference to your Official Memorandum, No. 498*, dated 26th July 1876, I have the honor to report as follows.

2. I have long been aware of the state of the law regarding a tenant's possession as regards ejectment at the end of each fasli by his landlord. The landlords generally do not know it, and I consider it to be a matter as regards which the less said the better.

3. In constituting middlemen between themselves and the ryots there can be no doubt that the sole intention of the Government was to give the middlemen such rights as the Government itself had. Government regards its ryots as tenants on a lease subject to modifications on revisions of assessment, terminable annually at the will of the ryot, but terminable by Government only in the case of the land being required for public purposes or in case the assessment is unpaid.

4. Within my own experience no landlord has ever attempted to enforce the principle that a tenancy is annually terminable at the will of the landlord. The general custom is to regard a putta once granted as a permanent putta, and this has only been altered lately. As all puttas for

* G.O. No. 366.
Board's Proceedings, No. 851.

certain sums for terms above five years are subject to registration, many landholders are now issuing their new puttas for five years, and these the ryots now object to receive as a sort of admission on their part that they would be liable to ejectment on the expiration of the term. The landlords openly avow that a fixed term has been adopted solely to avoid the Registration Act, and it is evident that both parties are in general ignorance as to the law on the subject. So far as tenures in this division are concerned there could be no objection to the enactment of a law by which all non-ryotwari puttas should be placed on the same footing as Amani puttas. In other districts it is possible that the varying nature of the tenures might make such an enactment a violation of existing custom, and as regards this the officers concerned will report.

5. I have said above that there is no objection to such an enactment as regards this division so too as regards this district. I would observe however that it is generally undesirable to legislate in anticipation of a possible evil which has not happened, and the existing state of things has not yet in my experience called for a remedy. It is possible also that such an enactment might raise questions in other districts which would be most difficult to answer, and I think it might produce much ill-feeling. I am further by no means sure that in this district the Civil Courts might not hold that a universal custom now amounting to the force of law had put the non-ryotwari puttadar on a similar footing with the Government puttadar, in which case the object of the Government would be attained.

(True Copy.)

(Signed) T. PRITCHARD, Dy. Collr.,
for Collector.

ENCLOSURE No. 3.

Memorandum.

Paragraph 2. I must now turn my attention to the matter referred to me for opinion. The Judgment of the High Court in Special Appeal No. 9 of 1870, passed in reference to the question of ejectment, clearly determines that a landlord is at liberty to turn out his tenant at the end of each fasli, and the puttas, unless secured by express or implied terms, will not extend the duration of tenancy beyond one year. This decision of the High Court will undoubtedly work very hard upon the tenantry of Zemindari who have been for series of years in the uninterrupted enjoyment of their holdings. But as far as my knowldge and experience goes, I am not aware of any case in which the above doctrine was followed and the tenant ejected; the result anticipated by the Board have not, in my opinion, ensued.

3. I have some reasons to assign why the above judgment was not taken as a precedent in disposing of ejectment cases: (1) the judgment in question was reported in the High Court Volumes and in the *Madras Jurist* and is therefore not widely known to all the Zemindars, who in the majority of cases are unacquainted with English; (2) the period for which the putta is to run is generally secured by express terms; (3) suits for ejectment are very rarely filed; (4) the recent decision of the High Court, No. 45 of 1876, is conflicting to No. 9 of 1870 in the essential parts, although the subject matter in both the suits was nearly the same. The particulars of the case in which Judgment No. 9 of 1870 was passed were these. In the year 1837, the land in dispute was leased out to defendant under a muchilka and the tenancy continued to be regulated by the contract until 1867 when an increased rent was demanded by plaintiff (landlord) and refused by the defendant (tenant), thereupon the plaint sought without tendering a fresh putta to eject defendant by a Summary Suit, when the High Court on appeal held that the tenancy terminated at the end of the fasli and the landlord could turn the tenant out of his holding, but in the recent Judgment No. 45 of 1876 the High Court held that a landlord could not enhance the rent of a lease granted at a favorable assessment. The question of enhancing rent is involved in both the judgments, and if the landlord cannot enhance assessment as laid down in the latter as a necessary sequel, he cannot eject his tenant, because it was on the refusal of the tenant in the former case that he was

liable to ejectment. The latter judgment (No. 45 of 1876) must be taken to have over-ruled the former (No. 9 of 1870). The judgments passed subsequently, viz., 588 of 1876, Moothoo Caroopan Ambulam *versus* Moothoo Caroopa Chetty, dated 8th September, and No. 527 of 1876, between the Zemindar of Shevagiri and Soobooramanya Pillay, dated 25th September, clearly denote that the Judges of the High Court have altered their views of Rent Recovery Law, and consider that when a question of right is in issue between a landlord and his tenant (which is generally regarding the fluctuation of rent) a remedy under Act VIII of 1865 cannot be sought for, and Revenue Courts are not competent to determine the point.

4. If the above decisions are read in connection with 9 of 1870, it would be clear that the rate of rent cannot be increased, and necessarily as long as the stipulated rent is paid the tenant cannot be ejected. No claim for the ejectment of tenant merely because an increased rent was refused to pay will ever be brought, and thus all apprehensions regarding the termination of the tenancy are set at rest by the recent decisions above adverted to.

5. I have shown above that no injurious effect was produced by the High Court's Judgment No. 9 of 1870, but still I cannot overlook the fact that it is very desirable that the law on the subject should be clear, and by necessary amendments in the present law clear provision be made defining the period for which tenancy is to run in view to avoid ambiguity in disposing of cases in which such question may be in issue.

6. In conclusion, I beg to submit that there are several points which, in my humble opinion, require a modification of the present law, but I do not think I will be justified to comment upon them in the present Memorandum, and would therefore defer doing so until proper time arrives.

(Signed) MAHOMED GHATTALA,
Acting Deputy Collector.

(True Extract.)

(Signed) T. PRITCHARD, Dy. Collr.,
for Collector.

Exd. W. J. Lewis.

From A. McC. WEBSTER, Esq., Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Brahmawar, 15th November 1876, No. 2,127.

With reference to the Proceedings of the Board of Revenue, dated 28th March 1876, No. 851, I have the honor to report that the effect of the ruling of the High Court therein alluded to has not been felt in the district.

2. In this district Wurgdars obtain leases from their tenants, but no putta is granted to the latter, except in the case of a permanent lease or a lease for a number of years. Temporary leases are generally granted for a year. In such cases the tenant stipulates among other things to surrender the land to his landlord at the end of the year. This condition is in many cases not enforced, and the tenant retains his holding on executing a fresh lease. Such tenants are called "Chalgneni tenants" (tenants at will). They have no right or interest in the land which they occupy.

3. The only lands in the district which may be considered as Inams are those assigned in lieu of tasdiks to temples and other religious institutions; but even in their cases the trustees of the institutions possess no right either to raise the amount of assessment or to oust the ryot, their right being limited simply to the collection of the Government assessment assigned to them.

4. In the case of a lease for a term of years if the tenant refuses to vacate at its expiration the Wurgdar files a suit of ejectment in a Civil Court and the case is decided on its merits.

Exd. W. J. Lewis.

No. 618.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 7th March 1879.

Read the following file of replies to Board's Proceedings, dated 28th March 1876, No. 851:—

Letter from the Collector of	Ganjam,	dated	11th	June	1877,	No.	1,956.
" " "	of Vizagapatam,	"	28th	Oct.	1876,	"	1,524.
" " "	of Godavari,	"	2nd	June	"	"	151.
" " "	of Kistna,	"	14th	Sept.	1877,	"	1,993.
" " "	of Nellore,	"	16th	Nov.	1876,	"	3,214.
" " "	of Cuddapah,	"	19th	Sept.	"	"	238.
" " "	of Bellary,	"	27th	Aug.	1877,	"	681.
" " "	of Kurnool,	"	7th	July	1876,	"	304.
" " "	of Madras,	"	28th	"	"	"	252.
" " "	of Chingleput,	"	20th	June	"	"	374.
" " "	of North Arcot,	"	17th	Aug.	"	"	387.
" " "	of South Arcot,	"	26th	July	"	"	327.
" " "	of Tanjore,	"	24th	Jan.	1877,	"	287.
" " "	of Trichinopoly,	"	15th	June	1876,	"	161.
" " "	of Madura,	"	12th	Aug.	"	"	300.
" " "	of Tinnevelly,	"	8th	July	"	"	431.
" " "	of Coimbatore,	"	10th	June	"	"	117.
" " "	Commr. of the Nilgiris,	"	9th	"	"	"	32,

recorded in Board's Proceedings, dated 7th March 1879, Mis. No. 2,224.

Collector of	Salem,	dated	15th	Nov.	1876,	No.	301.
" " "	of South Canara,	"	15th	"	"	"	2,127.
" " "	of Malabar,	"	25th	Aug.	"	"	226.

Resolution—dated 7th March 1879 No. 618

IN their Proceedings, dated 8th September 1871, No. 3,876, the Board called attention to the judgment of the High Court in Special Appeal No. 9 of 1870, and urged upon Government the necessity of obtaining an enactment affirming in unmistakable terms the right of occupancy possessed by Zemindari ryots, and in G.O., dated 13th March 1876, No. 366, the Government called on the Board to enquire and report whether the results anticipated by the Board had ensued and to what extent. The replies received from District Officers on the subject will now be forwarded for the information of Government. Many of them comprise discussions at considerable length as to what the respective rights of Zemindars and their ryots really are, but as the object of the Government in making this reference was merely to ascertain facts with regard to the operation of the judgment in question, these discussions will be but briefly noticed in the remarks which will be made below.

2. The Collectors of *all* districts except Ganjam, Vizagapatam, and Nellore report that the ruling in question has had no effect in their districts. Most of these Collectors and officers consulted by them incline to the opinion that this is mainly owing to the decision of the High Court in the case in question not being widely known, but as a matter of fact nothing has as yet resulted from it to the detriment of the ryots.

3. Mr. Grahame when Acting Principal Assistant in charge of Ganjam is unable to cite any instance of an ejectment which can be attributed to the judgment of the High Court in the case referred to, but alludes to general complaints of extortionate practices brought against the Zemindars of Chikati and Kallikot in 1875 as showing

that the decision has had the effect of emboldening landholders successfully to enforce arbitrary terms upon their tenants, and of paralyzing the efforts of the tenants successfully to resist the demands of the landholders. In the case of the Chikati Zemindar, however, there seems to have been a thorough reconciliation between the Zemindar and the ryots after the death of the Diwan, and Mr. Davidson, who was Collector of Ganjam when the complaints against the Kullikot Zemindar were preferred, regarded the ryots' claims as unreasonable and out of the question.

4. From Vizagapatam there is a general *consensus* of opinion that no ryot can now successfully contest a suit of ejectment. Some hold that the decision in question changed the law, others that it merely gave legal sanction to the previously existing practice, but amongst the many Revenue and Judicial Officials, Zemindars and Diwans consulted by the Collector there is not one who expresses an opinion that the effect of the decision has been other than disadvantageous to the position of the ryot. The Acting Senior Assistant Collector writes, "since the ruling has rendered it clear that tenants have no occupancy rights, the Civil Courts are extensively resorted to, and the present practice is to pass a decree of ejectment on proof that the term of the putta has expired," and this statement of the existing state of affairs seems to be fully borne out by the other testimony adduced.

5. From Nellore the Collector reports that he does not learn that the tenure of lands generally has been rendered precarious by the ruling, but two cases* are cited in which it is stated that a decree in favor of the Zemindar of Kalahasti was specifically based on the High Court's decision in question. Copies of the District Court's judgments in both cases are forwarded. In only one of these, viz., Regular Appeal No. 29 of 1873, do the Board find any allusion to the decision, but the case is an important one as it appears that under the High Court's ruling the District Judge, though expressing much regret, considered himself to be bound to decide against a tenant of seventy-three years' standing on the ground that his lease was clearly from year to year, determinable at the close of any particular fasli.

* Regular Appeal No. 21 of 1873.
" " " 29 " "

6. It will thus be seen that it is only from three districts that the decision of the High Court in question is reported to have led as yet to the results anticipated by the Board. As regards Ganjam the connection between the cases cited and the High Court's decision is not very clear; in Nellore, though the ruling has as yet had no general effect, it has received judicial notice in very decided terms; and in Vizagapatam it seems to be generally conceded that the decision has in effect dealt a death-blow to the hopes of the party who contended that the Zemindary ryot was not a mere tenant-at-will.

7. The Collector of Cuddapah remarks that, as there was a special contract in the case in question, he doubts whether the ruling goes so far as to lay down that every tenant can be ousted at the caprice of his landlord, and the same view is advocated at great length by the Diwan of Venkatagiri. There is no doubt much truth in this view, but it seems to be clearly established that wherever the judgment has been relied on by landlords it has had the practical effect of rendering the tenant's position much less secure. Perhaps this might be counteracted by getting a well-selected case brought under the judicial cognizance of the High Court, as suggested in paragraph 31 of the Diwan's letter, and Collectors might be instructed accordingly, but local customs differ greatly and a really representative case may not be easy to find. The Board incline to think that the whole question of the relations of Zemindars as landlords stands at present on a very unsatisfactory footing, and that the sooner the difficulty is faced and dealt with in a thorough and efficient manner the better for all parties concerned.

8. The questions of their relations to their tenants, of their liabilities in times of pressure and famine, of their responsibilities as regards keeping up public works† on which the well-being and indeed the lives of numbers depend, of the status of village officers in Zemindaries, of the

† G.O., Public Works Department, dated 16th September 1878, No. 722-I.

maintenance of village accounts and collection of statistics, each and all of these questions seriously demand attention, and the Board do not see that it can be efficiently given unless an officer or a commission is specially deputed for the enquiry. In their opinion the subject is large enough and important enough to render such a course most desirable.

(A true Extract.)

(Signed) J. STURROCK,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with a file of replies, and copy of Board's Procs., 7th March 1879, Mis. No. 2,224.

" all Collectors.

Ent. A. Grubert.

Board of Revenue,
1879.
MADRAS.

To

THE SECRETARY TO GOVT.,
REVENUE DEPARTMENT,
&c., &c., &c.

Dated March 7th.

Printed 18*th.*

Received

PROCEEDINGS, 7TH MARCH 1879, No. 618.

MARCH.
No. 618.

Ejectment of Tenants by their Landlords.—Forwarding to Government reports from Collectors on the effect of the ruling of the High Court in Special Appeal No. 9 of 1870 regarding —

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

18th March 1881, No. 475.

READ THE FOLLOWING PAPER :—

No. 268. From C. L. TUPPER, Esq., Officiating Under Secretary to the Government of India, Home, Revenue and Agricultural Department (Revenue), to the Secretary to the Government of Madras, dated Fort William, 24th February 1881, No. 160.

I AM directed to forward an extract* from the Report of the Indian Famine Commission, Part II, Chapter III, Section 1, on the subject of the position of the tenants in the Madras Presidency, and to request that the Government of India may be favored with the opinion of His Excellency the Governor in Council on the points raised.

* Paras. 40 to 44 and 31-32.

ENCLOSURE No. 1.

Extracts from Report of the Indian Famine Commission (Part II) Chapter III, Section 1.

Para 31. But the question of sub-letting seems to us to be one of even greater importance. The more valuable the occupancy right becomes by reason of such measures of protection as we have advocated, the more need there will then be of guarding against a custom which is everywhere prevalent in India, under which the privileged tenant is apt to turn into a middleman, sub-letting the land and living on the difference between the rack-rent and the privileged rate secured to him by the law. The occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator; and the object of the law should be to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights. If this can be secured, the chief danger in the way of making such rights marketable will be removed, for they will not be able to pass into the hands of money-lenders, and if a tenant who becomes deeply involved is sold up, his land will pass to another tenant, presumably a more thrifty man, and the public interests will not suffer by such a substitution. We therefore recommend that concurrently with the extension of the right of transfer the practice of sub-letting by an occupancy tenant should be discouraged, or even, if possible, forbidden. Care must no doubt be taken lest such a measure should work harshly. But if a tenant, for a long period, fails to keep up the stock required for cultivating his land, or otherwise ceases to be by occupation and habit a *bonâ fide* cultivator, the rights he or his ancestors acquired by cultivating the soil might reasonably pass from him to the person who, having become the actual cultivator, occupies his place. We conceive that it would not be difficult for the Rent Courts to investigate and decide the question of fact, whether a tenant with occupancy rights has or has not wilfully ceased to be a habitual cultivator in respect of the whole or any part of his holding; and when such lapse is established the occupancy right might be held to have passed to the person to whom the actual cultivation of the land has been transferred.

32. The tenants-at-will form a large and an increasing class, the growth of which in some parts of India cannot be looked on without serious apprehension. They are kept in a situation of absolute dependence on the landlord, which takes away the desire to improve the land or to raise their own position, or to lay by anything from the profits of agriculture. The soil, therefore, is not unlikely under such tenants to become year by year less productive, and the tenant, having neither credit nor stores to fall back upon, becomes a prey to the first approach of famine. It is much to be desired that for tenants of this class some means should be provided by which they might, without injury to the landlords, secure occupancy right in the lands they hold. It seems not impossible that a plan might be adopted under which, with all reasonable attention to the interests of the landlord and with suitable limitations as to the character of the holdings to which the plan would apply, an estimate should be made, either in the form of a rate per acre occupied or of a percentage on the rent paid, which shall represent the annual amount which a landlord gains by his tenant not possessing occupancy rights, and that on the tenant-at-will making good, by instalments during a certain number of years, a sum equal to the capitalized value of that amount, in addition to his present rental, he should thereby obtain the privilege and the advantages of security of tenure which attach to an occupancy tenant.

No useful end would be obtained by our entering further into the details of such a scheme as this, but we think that the subject is of such importance as to call for the consideration of the Government. It would, we conceive, operate in the direction of restoring to the cultivating class the protection which they had under the ancient custom of the country against extreme pressure by rack-renting, but which they have, in a great measure, lost under our rule; and we hope that it, or some similar plan, my be found suitable for adoption, in order that those among the tenants-at-will who are the best cultivators, and the most thrifty persons, may have an opportunity of raising themselves from their present precarious situation to the more secure position of an occupancy-tenant

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ENCLOSURE No. 2.

Extracts from Report of the Indian Famine Commission, Part II, Chapter III, Section 1.

Para. 40. In consequence of the tendency on the part of those who are recorded as ryots to sublet their lands or part of them, and to live on the difference between the rents they receive and the revenue they pay to Government, a considerable class of subordinate tenants is growing up who have no permanent interest in the land, and who pay such high rents that they must always be in a state of poverty. These subordinates are not recorded or recognized in the Government registers, but the existence of such a class involves the same evils as we have dwelt on in the case of the tenants-at-will in Upper India. We think that the question should be submitted to the consideration of the Local Government, whether it is contemplated that, under the Land Revenue Settlement, Government ryots should be permitted to sublet their lands, and if so, whether measures should not be taken for recognizing the status of such sub-tenants and recording the area they hold, the rents they pay, and the conditions of their tenure.

41. In the Madras Presidency several amendments of the law regulating the relation of the great Zemindars to the class of cultivators who hold under them and who are in number about a million are desirable. For many years these tenants appear to have enjoyed rights closely corresponding to those of the Government ryot, and Regulation XXV of 1822, which governed the subject virtually recognized the existence of these rights, and provided various safeguards for their preservation. In like manner the Rent Act VIII of 1865 implies, without affirming, the existence of these rights and lays down several rules for their better enforcement. So far as we have been able to learn, the existence of these rights was never seriously questioned till a judgment of the High Court passed in 1871 was understood as laying down the proposition that a Zemindari tenant is *primâ facie* a tenant-at-will, and that in the absence of proof of a custom to the contrary, the landlord's right to enhance or eject must be presumed.

42. This view of the law (which it is possible that it may not have been the intention of the Court to affirm) is deprecated by other high Judicial authority, by the Board of Revenue and by numerous Collectors who have been consulted on the subject. The general result of the evidence received by the Commission is that the effect of the inadequate wording of the Rent Act of 1865, coupled with the ruling of the High Court, has been to alter the legal position of Zemindari tenants and to render it precarious, exposing them to many forms of oppression, and excluding them from all the benefits which it was the object of the Regulation which gave a legal status to the Zemindari system, and of the Rent Act to secure for every class of tenant; and that the ill-consequences of this defect in the law are likely to become more apparent as the new view becomes better known. We entirely concur in the opinion expressed by Mr. Justice Innes and the Board of Revenue, that legislation is necessary, and that its postponement cannot fail to prove detrimental to the status of this large class of cultivators. The right course would, we think, be to provide that all tenancies should, *primâ facie*, carry a right of occupancy, and to throw on the landlord the onus of proving the facts from which a non-occupancy tenure has to be inferred: such facts would be, the commencement of the tenancy by a contract reserving to the landlord the right of eviction, or a clearly proved custom of eviction.

43. The same observations apply equally to the occupants of land in villages owned by Inamdars or other persons to whom Government has transferred all or part of its right to the land revenue. In these cases, as well as in the Zemindaris, it is essential that the villages should be surveyed, village accountants kept, and all village papers and statistical returns duly furnished which are needed for the information of the Government, and the record of the rights of the parties concerned; and we recommend that measures should be taken to carry out this suggestion.

44. The remarks we have made in the case of the Bombay Presidency as to the position of the subordinate tenants under the registered ryots apply with equal force to the Madras Presidency.

No. 269. ORDER THEREON, 18th March 1881, No. 475.

Miscellaneous.

THE extracts received with the foregoing letter will be circulated to the Board of Revenue and the gentlemen named below, with the request that they will favor Government with an expression of their views on the important questions therein discussed.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue.
" the Hon. Justice Muthusami Aiyar, C.I.E.
" the " A. Séshayya Shastri, C.I.E.
" the " V. Ramayyangar, C.S.I.
" M.R.Ry. P. Chentsal Row Pantulu Garu.
" " P. Srinivasa Row Garu.
" " G. Muthusami Chetti Garu

Exd. W. H. French.

140 Copies.

Original

Govt. of (1881) Madras.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated March 18*th*

Printed 22*nd*.

Read. *Encl.*

G.O., 18*th March* 1881, No. 475.

MARCH.

Nos. 268-269.

SUBJECT.

Position of Cultivating Tenants in the Madras Presidency.—Directing, with remark, that the extracts received with the letter from the Government of India regarding the — be circulated to the Board of Revenue and certain gentlemen referred to for an expression of their views,

Mylapur
Madras
27th April 1881

To

The Revenue Secretary to
Government Madras.

Sir.

I have the honor to acknowledge receipt of the G.O. dated 18th March 1881 No. 475.

The points on which I am asked to give my opinion are, I believe, the following.

1st, whether it is desirable to discourage or even forbid the practice of a tenant with occupancy rights sub-letting his land, and if they are permitted to sublet their lands, whether measures should not be taken for recognizing the status of such sub-tenants

sub-tenants, and recording the area they hold, the rents they pay, and the conditions of their tenure.

2nd ly. Whether it is possible and desirable to improve the position of the tenants at will, by providing them with some means by which they might without injury to the Landlords secure occupancy right in the lands they hold, and if so, what is the best means to be adopted for attaining the object in view.

Thirdly, Whether fresh legislation is not necessary to set the rights of tenants of Zemindars and Inamdars on a firmer footing than they now are, by providing that, all tenancies should prima facie, carry a right of occupancy, the onus of the non-occupancy tenure being left to the Land lord.

Fourthly, Is it not essential that all Inam and Zamindary villages should be surveyed, village accounts kept, and statistical returns, needed for Government, furnished, and if so, what measures should be adopted?

First. I do not think that it is desirable to prevent or even discourage subletting. To stop sub-letting would be stopping progress. Men desire not only wealth, but also ease, pleasure, social position and power; they wish to get wealth with the least possible trouble, exertion and sacrifice, so that, when a tenant who has occupancy rights acquires sufficient wealth, the first thing he desires to secure is ease and pleasure. He would be glad to have 100 Rs a year without toil by sub-letting his land to another, rather than 200 Rs by working on the

land

land himself, provided the 100 Rs are sufficient to maintain him decently. Is it proper to curb this natural desire? Is it just? And is it advantageous to society? I should say it is palpably unjust to prevent a man from doing what he likes with his property, and no amount of reasoning in the world will ever convince people who are told to relinquish a source of income guaranteed by custom that the deprivation of their rights is just, but I would go so far, that if the measure be really advantageous to the society at large, it may be introduced, since husbandry is a public benefit and contributes to the increase and plenty of provisions, but I do not think that such a measure would be in any way advantageous to society. Before I show that it would not be advantageous, I think it necessary that I should briefly state the several conditions

conditions on which lands are usually sublet in this Presidency. Lands are sublet (1) for a fixed share in the produce, all the expenses of cultivation being borne by the under tenant (2) for a fixed quantity of produce or sum of money payable to the Land lord, the expenses of cultivation being borne by the under tenant and (3) for a fixed share in the produce, the agricultural stock being supplied by the Land lord. As a rule, the undertenant does not undertake to pay Government assessment due on the land, it being paid by the ryot having the occupancy right and the cost of improvements is also borne by the latter. Thus the under tenant is not responsible to Government for the assessment is not under the necessity of raising capital to improve the land, but has every interest to cultivate the land well, as thereby he increases his own gains. It is true that if he had a more permanent interest in the land he would cultivate it

it better, but he may not be able to provide himself with the agricultural stock, to raise capital for improvements, and may not also be able to pay assessment to Government which often becomes payable before crops come to hand, and which in some years happens to be in excess of the income. There will always be a certain class of persons of this discription who could and would cultivate lands with advantage as subtenants, but who could not do so as independent cultivators and I do not think it is at all desirable to discourage that class. An ordinary Labourer can never all at once become a tenant with occupancy rights. The position of a tenant at will is the intermediate stage between a Labourer in the field and a tenant with occupancy rights, and to do any thing to discourage this intermediate class would be to discourage progress and social advancement. Another view of the matter is, if a tenant with occupancy rights knows that the moment he ceases to be a bonafide Cultivator, his occupancy rights would terminate, he would not cease to be a bonafide cultivator and thus deprive himself of his rights. Instead of having tenants with a fixed share in the produce as an inducement to cultivate the land well, he would have hired servants under such supervision as would constitute him a bonafide Cultivator and the consequence would be more indifferent cultivation and less produce to the country. Therefore whether the question is looked at from an economical or social point of view or as a mere question of justice, it is clear that it is not desirable to deprive tenants of their power to sublet their lands at their pleasure. I may also mention here that the number of cases in which lands are sublet in this Presidency is exceedingly small, and cannot be rated as much as 1 per cent of the number of tenants with occupancy rights

Here

There is however no objection to recording the area of lands held by each tenants, the rents they pay and the conditions of the tenures.

With reference to the second point no body can deny the desirability of improving the conditions of tenants at will. The interest of Landlord is certainly not always a sufficient security to the public for the good management of land and tenants cannot be made to trust entirely in the generosity of the Land lord, and their interests made dependent on their good feeling and forbearance. But the best way of securing the object in view is not by compelling the Land owners to sell their rights to tenants as suggested by the Famine Commissioners, a measure which even if possible and just would be highly unpopular, but by securing to tenants their own property in their own improvements. I think that if the tenant has added any thing to the value of the land beyond the duration of his tenancy, the Landlord should be made to purchase the

the improvements at its full value, through the terms of the tenancies might be to the contrary. A law on the above direction will lead to the much desired and fearless investment of capital in land, and can in no way injure any party. The only possible objection to this is, that it will virtually give to rich tenants the power of acquiring the occupancy right of the land, as there are lots of cases where Land lords are poor and unable to pay for the improvements, but since the Courts will award a fair rental and the Land lord will have the lands back when the improvements are exhausted or he is able to pay for them, no real hardship can accrue to any party while the land benefits and the people with it. The details of this measure require great consideration but I need not enter into them here. It is sufficient to mention that such a system exists in England and it is possible to work the details in a suitable manner. I doubt the possibility of making the tenants buy the free hold tenure even if

if it were just to do so. Of course every tenant whatever be the duration of his tenancy, cannot be allowed to buy the freehold, and if a limit of time is placed, the Land lord will see that the limit is not attained. The result will be frequent changes of tenancy and the consequent deterioration of the land.

As regards the third point i.e, tenants of Zamindars and Inamdars, the necessity of legislative action is undoubtedly urgent. At present the Zamindary tenants have hardly any security of tenure. Their rents are high, they are forbidden from making improvements on their land without the permission of the Zamindars, money is wrung out of them to the last penny and they are annoyed in every possible way, and their existence has become tolerable, only by their ability to cheat the Zamindars in their turn by concealment of cultivation and bribing

bribing the subordinates entrusted with the administration. I think that the defect of the existing law is not merely in that the onus of proving the right of ownership is thrown on the tenants instead of on Zamindars, but also in not defining the rights of Zamindars as such in regard to the soil. A Zamindar may of course claim right in the soil in the capacity of a private individual, he having purchased it, or cleared a forest or acquired by some other legal means, but the point must be set at rest whether a Zamindar can as a Zamindar ever claim right in the soil on the mere ground that he exercised such rights as Zamindar both before and after the Permanent Settlement. As the law now stands or at least as it is now interpreted, it does not decide one way or the other and the Courts are left to decide each case on its merits. The opinions of Judges vary so often, clear proof on a matter like this is so difficult, the rights are so poor, a law suit is so expensive, and the

Zamindars

Zamindars — so rich and powerful, that the ryots are practically unprotected, and I think that it must be clearly laid down that a Zamindar as a Zamindar cannot claim any right in the soil, and that his right is merely confined to the realization of the Government share of the produce whatever it may be, he being of course, competent to make such arrangements as may be necessary for securing his share of the produce, in other words he being competent to arrange for the land being brought under cultivation at an early date. But when once the land is cultivated and a tenancy — established; he should have no power to eject the tenant unless he refuses to pay the proper rent or assessment due to the Zamindar. This is exactly what the Government do in regard to the lands under their own management; and I do not think that there will be any difference of opinion in regard to the propriety or advisability

advisability of such a ruling in the interests of the country. The only question is, whether such a regulation involves any breach of faith with the Zamindars. I certainly think not. The payments of the tenants were never regulated by Zamindars by competition, or a separate bargain made with each ryot; but the rents have always been settled with reference to some custom or rule, thus recognizing the occupancy rights of tenants. There may be cases in which the Zamindars did turn out occupants when they did not pay the sums demanded whether they were reasonable or not; but such cases are extremely rare, were never recognized by Government and no legitimate inference can be drawn from them. Moreover the permanent settlement regulations recognize no such right in the Zamindar. On the contrary they lay down that Zemeendars "shall enter into engagements with their ryots for a rent either in money or kind,"

See 14 Reg XXX of 1802

that

that "where disputes arise respecting rates of assessment in money or divisions in kind, the rates shall be determined according to the rates prevailing in the cultivated lands in the year preceding the assessment of the Permanent Jamma on such lands, or where those rates may not be ascertainable according to the rates established for lands of the same description and quality as those respecting which disputes may arise". The regulations do not give any power to Zamindars to eject tenants on the ground that they do not give the rates demanded of them, but on the contrary, the case in which Zamindars can eject their tenants is specifically mentioned. It is only "where under-farmers or ryots may refuse to exchange mutual engagements in writing with Proprietors

+ Sec 9 Reg XXX of 1802

Sec 10 Reg XXX of 1802.

Proprietors or farmers of land" that "such proprietors or farmers have power to grant lands of the under farmers or ryots so refusing to other persons". It is contended by some, and indeed the view taken by the High Court is, that the latter Section is applicable to cases in which ryots possess occupancy rights, but not to all tenants, but none of the regulations draw any distinction between ryots with occupancy rights and those with no such rights. The permanent settlement regulations every where speak of only two classes of persons having interest in the land i.e. Zamindars and tenants, and it is enacted that tenants should not be ejected except when they refuse to pay a proper rent, and it is certainly beyond my power to comprehend, how the Regulations could be reasonably construed

in

in the manner they have been. It must also be remembered that rights of occupancy are not, as a rule, rights conferred by any Act of State, but come into existence and grow with the advancement of the country. Rights of soil were unknown in former times when husbandry was rude and land available in plenitude. The year's crops represented the return to which the ryot was entitled for his industry and he did not care whether he possessed occupancy right in the soil or not, since if he was dispossessed of his land in one place he could cultivate in another locality. But times are now changing. Land has become scarce and it has become necessary to import skill and capital into agriculture, and cultivation — therefore requires greater protection than it did when labor and seed were the chief investments in the

soil, and I think there is nothing in the Permanent Settlement which should prevent the Legislature from giving to the tenantry that protection of their growing rights which the conditions of society require. I would therefore unhesitatingly enact that Zamindars as Zamindars have no right in the soil, and if they want to establish right of occupancy they can only do so by proving that they have acquired it in their capacity of private individuals. In other words, no Zamindar should be allowed to plead in a Court of Law that he always as a Zamindar exercised rights of occupancy and that therefore the ryots are tenants at will, but he must prove that he, or the person through whom he claims, acquired the right by purchase gift or bequest or by investment of capital. If the ryots right in the soil is once recognized, I think

it follows that the improvements of the ryots on the land ought not to be taxed. I would not however give retrospective effect to this rule, as the measure would be highly detrimental to the revenues of the Zamindars and consequently distasteful to them. But there is no injustice whatever in declaring that the Zamindar should not in future be permitted to tax ryots' improvements on the land. If a ryot dig a well in his land and thus increases his produce, the Zamindar should not be allowed to share in the increased produce, and the law must be definite on the subject. I know that in some Zamindaries ryots are actually prevented from digging wells in their lands without the permission of the Zamindar, which is not granted unless the lion's

lion's share of the profit is promised to the Zamindars. There are also several minor points with reference to the rent recovery act VIII of 1865 which require consideration. For

See 41 Act VIII of 1865.

instance, it is altogether a question whether the Zamindar should have the power of ejecting a tenant at all when arrear is not paid and whether the interest of the tenant whatever it may be, cannot always be sold, but such minor points can be considered when the act is revised. The main point is whether Zamindary ryots should be declared or not as possessing occupancy rights in the same way as Government ryots are. If however the Zamindary tenants cannot be broadly declared to possess rights of occupancy, the next best thing is to institute a special enquiry by means of a Commission, and settle once for all who have occupancy rights and who have not. A clear Register showing the ryots.

rights with or without occupancy
rights in Zamindaries will be of
immense value to the Country and
conducive to the improvement of
property.

The above remarks apply
more or less, to the tenants of Inamdars
also with the difference that unlike
Zamindars, Inamdars often occupy
the double position of Government
and tenant. They represent Govern-
ment because they are entitled to the
assessment payable to Government
and it is not unfrequently that they
have also occupancy right either because
they were actual tenants before the
land was made Inam or because
the rights of tenants have been
purchased or otherwise acquired by
them or by those who granted the
Inam. Of course there are cases
in which the Inamdar has no title
whatever to the land and the only
way of improving matters in regard to the
tenants

tenants of Inamdars is by holding
an enquiry and registering once for
all the names of the real Proprietors
of the land.

With reference to the last
point on which I am to give my
opinion, I do not think the question
admits of a difference of opinion.
Certainly Government should have
the means of obtaining statistics
from all parts of the Country within
their dominion, and the present
system of keeping accounts in
Zamindary Villages is any thing
but satisfactory. There is an office
of Kurnam in each Zamindary village,
whose duty it is to keep accounts
but he is not paid in any uniform
scale. He gets too much in some
places and too little in others, and
neither Government nor Zamindar
has any power to interfere with the
scale of the fees he gets. He is
responsible to the Zamindar and to
Govt.

Government, but neither has power to remove or suspend him and he can only be dismissed by a Civil Court after the tedious process of a regular suit. I think that much good will not result by placing the Kurnam under the control of the Collector as his services are chiefly due to the Zamindar, but the results will I believe be satisfactory if the Zamindars are made responsible for furnishing any statistics concerning their estates which Government may require, he dealing with his establishment in the best manner he likes. It is but right that each Land-holder should furnish to the State such information in regard to his Estate as may be necessary for Public benefit and the system of Government appointing their

their own Servants for furnishing information in regard to the Estates of private individuals appears to me to be altogether faulty.

I have the honor to be

Sir

Your most obedient Servant

V Chentsalrao

Head Sheristhadar

Board of Revenue.

Revenue 1881 Dept.

No. 2251.

From:

P. Ebenezer Rao, Esq.
Head Assistant
Board of Rev.

Dated 29th April
Rec'd 28th "

Giving his opinion on the points regarding the question of cultivating tenants in the Madras Presidency.

Revenue Secretariat, Ootacamund,
29th April 1882.

My dear Sir,

Your letter of the 26th instant and papers relating to Zemindary reports received this morning.

The Secretary-Rao affirmed

(1) the Correction you have made in My Sto Reso's letter

(2) Your suggestion to omit

C. 11-10-81 C. 20-2-82 R. 16-3-82
C. 20-10-81 C. 18-2-82 R. 23-3-82
C. 20-10-81.
R. 20-10-81.

Revenue 1881 Dep

his own letter excl
indicate the omission
by stars marks.

The letter to India is duly copied.

Which as the f.o. are now
numbered and dated. This
was not done before sending
further instructions from the
Secretary about the halebury
the papers which he has
now given. The f.o. has

to be returned before
despatch.

All the papers received
with your letter are herewith
returned.

Yours sincerely
Joseph Hooker

Revenue 1881

PROCEEDINGS OF THE BOARD OF REVENUE, dated 26th September 1881.

No. 2,122.

Read—again the following Proceedings of the Board of Revenue, dated 13th April 1881, Miscellaneous No. 3,955.

Read—the following Proceedings of the Madras Government, Revenue Department, dated 18th March 1881, No. 475.

Read the following letter from C. L. TUPPER, Esq., Officiating Under Secretary to the Government of India, Home, Revenue, and Agricultural Department (Revenue), to the Secretary to the Government of Madras.

ENCLOSURE ~~No. 1.~~

EXTRACTS from Report of the Indian Famine Commission, Part II, Chapter III, Section 1.

PARAGRAPH 31.—But the question of sub-letting seems to us to be one of even greater importance. The more valuable the occupancy right becomes by reason of such measures of protection as we have advocated, the more need there will then be of guarding against a custom which is everywhere prevalent in India, under which the privileged tenant is apt to turn into a middleman, sub-letting the land and living on the difference between the rack-rent and the privileged rate secured to him by the law. The occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator; and the object of the law should be to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights. If this can be secured, the chief danger in the way of making such rights marketable will be removed, for they will not be able to pass into the hands of money-lenders, and if a tenant who becomes deeply involved is sold up, his land will pass to another tenant, presumably a more thrifty man, and the public interests will not suffer by such a substitution. We therefore recommend that concurrently with the extension of the right of transfer the practice of sub-letting by an occupancy tenant should be discouraged, or even, if possible, forbidden. Care must no doubt be taken lest such a measure should work harshly. But if a tenant, for a long period, fails to keep up the stock required for cultivating his land, or otherwise ceases to be by occupation and habit a *bonâ fide* cultivator, the rights he or his ancestors acquired by cultivating the soil might reasonably pass from him to the person who, having become the actual cultivator, occupies his place. We conceive that it would not be difficult for the Rent Courts to investigate and decide the question of fact, whether a tenant with occupancy rights has or has not wilfully ceased to be a habitual cultivator in respect of the whole or any part of his holding; and when such lapse is established the occupancy right might be held to have passed to the person to whom the actual cultivation of the land has been transferred.

32. The tenants-at-will form a large and an increasing class, the growth of which in some parts of India cannot be looked on without serious apprehension. They are kept in a situation of absolute dependence on the landlord, which takes away the desire to improve the land or to raise their own position, or to lay by anything from the profits of agriculture. The soil, therefore, is not unlikely under such tenants to become year by year less productive, and the tenant, having neither credit nor stores to fall back upon, becomes a prey to the first approach of famine. It is much to be desired that for tenants of this class some means should be provided by which they might, without injury to the landlords, secure occupancy right in the lands they hold. It seems not impossible that a plan might be adopted under which, with all reasonable attention to the interests of the landlord and with suitable limitations as to the character of the holdings to which the plan would apply, an estimate should be made, either in the form of a rate per acre occupied or of a percentage on the rent paid, which shall represent the annual amount which a landlord gains by his tenant not possessing occupancy rights, and that on the tenant-at-will making good, by instalments during a certain number of years, a sum equal to the capitalized value of that amount, in addition to his present rental, he should thereby obtain

the privilege and the advantages of security of tenure which attach to an occupancy tenant. No useful end would be obtained by our entering further into the details of such a scheme as this, but we think that the subject is of such importance as to call for the consideration of the Government. It would, we conceive, operate in the direction of restoring to the cultivating class the protection which they had under the ancient custom of the country against extreme pressure by rack-renting, but which they have, in a great measure, lost under our rule; and we hope that it, or some similar plan, may be found suitable for adoption, in order that those among the tenants-at-will who are the best cultivators, and the most thrifty persons, may have an opportunity of raising themselves from their present precarious situation to the more secure position of an occupancy tenant.

ENCLOSURE No. 2.

EXTRACTS from Report of the Indian Famine Commission, Part II, Chapter III, Section 1.

* * * * *

PARAGRAPH 40.—In consequence of the tendency on the part of those who are recorded as ryots to sublet their lands or part of them, and to live on the difference between the rents they receive and the revenue they pay to Government, a considerable class of subordinate tenants is growing up who have no permanent interest in the land and who pay such high rents that they must always be in a state of poverty. These subordinates are not recorded or recognized in the Government registers, but the existence of such a class involves the same evils as we have dwelt on in the case of the tenants-at-will in Upper India. We think that the question should be submitted to the consideration of the Local Government, whether it is contemplated that, under the Land Revenue Settlement, Government ryots should be permitted to sublet their lands, and if so, whether measures should not be taken for recognizing the status of such sub-tenants and recording the area they hold, the rents they pay, and the conditions of their tenure.

41. In the Madras Presidency several amendments of the law regulating the relation of the great Zemindars to the class of cultivators who hold under them and who are in number about a million are desirable. For many years these tenants appear to have enjoyed rights closely corresponding to those of the Government ryot, and Regulation XXV of 1822 which governed the subject virtually recognized the existence of these rights, and provided various safeguards for their preservation. In like manner the Rent Act VIII of 1865 implies, without affirming, the existence of these rights and lays down several rules for their better enforcement. So far as we have been able to learn, the existence of these rights was never seriously questioned till a judgment of the High Court passed in 1871 was understood as laying down the proposition that a Zemindari tenant is *primâ facie* a tenant-at-will, and that in the absence of proof of a custom to the contrary, the landlord's right to enhance or eject must be presumed.

42. This view of the law (which it is possible that it may not have been the intention of the Court to affirm) is deprecated by other high Judicial authority, by the Board of Revenue and by numerous Collectors who have been consulted on the subject. The general result of the evidence received by the Commission is that the effect of the inadequate wording of the Rent Act of 1865, coupled with the ruling of the High Court, has been to alter the legal position of Zemindari tenants and to render it precarious, exposing them to many forms of oppression, and excluding them from all the benefits which it was the object of the Regulation which gave a legal status to the Zemindari system, and of the Rent Act to secure for every class of tenant; and that the ill-consequences of this defect in the law are likely to become more apparent as the new view becomes better known. We entirely concur in the opinion expressed by Mr. Justice Innes and the Board of Revenue, that legislation is necessary, and that its postponement cannot fail to prove detrimental to the status of this large class of cultivators. The right course would, we think, be to provide that all tenancies should *primâ facie* carry a right of occupancy, and to throw on the landlord the onus of proving the facts from which a non-occupancy tenure has to be inferred: such facts would be, the commencement of the tenancy by a contract reserving to the landlord the right of eviction, or a clearly proved custom of eviction.

43. The same observations apply equally to the occupants of land in villages owned by Inamdars or other persons to whom Government has transferred all or part of its right to the land revenue. In these cases, as well as in the Zemindaris, it is essential that the villages should be surveyed, village accounts kept, and all village papers and statistical returns duly furnished which are needed for the information of the Government, and the record of the rights of the parties concerned; and we recommend that measures should be taken to carry out this suggestion.

44. The remarks we have made in the case of the Bombay Presidency as to the position of the subordinate tenants under the registered ryots apply with equal force to the Madras Presidency.

Letter—dated Fort William, 24th February 1881, No. 160.

I AM directed to forward an extract* from the Report of the Indian Famine Commission, Part II, Chapter III, Section 1, on the subject of the position of the tenants in the Madras Presidency, and to request that the Government of India may be favored with the opinion of his Excellency the Governor in Council on the points raised.

* Paragraphs 40 to 44 and 31-32.

Order thereon, 18th March 1881, No. 475, Revenue.

Miscellaneous.

THE extracts received with the foregoing letter will be circulated to the Board of Revenue and the gentlemen named below, with the request that they will favor Government with an expression of their views on the important questions therein discussed.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue.
" the Hon. Justice Muthusami Aiyar, C.I.E.
" the " A. Seshayya Shastri, C.I.E.
" the " V. Ramayyangar, C.S.I.
" M.R.Ry. P. Chentsal Row Pantulu Garu.
" " P. Strinivasa Row Garu.
" " G. Muthusami Chetti Garu.

Resolution—

COMMUNICATED to the gentlemen noted in the margin, who are requested to favor the Board with their remarks upon the subject.

Messrs. Foster Webster, J. F. Price, and H. E. Stokes, and Mr. Macartney, Agent to the Rajah of Sandúr.

(True Extracts.)

(Signed) E. GIBSON,
Acting Secretary.

Read—the following letter from H. E. STOKES, Esq., Acting Collector of Salem, to the Secretary to the Board of Revenue, dated Atúr, 18th May 1881, No. 1,291.

I HAVE the honor to reply to Board's Proceedings, No. 3,955, dated 13th April 1881, calling for report on proposals of the Famine Commission for restricting subletting and abolishing occupancy rights held by others than actual cultivators, and for the amendment of the rent law.

2. I am of opinion that the proposals on the first subject are inexpedient and impracticable, and could only be justified by proof of widespread rack-renting of land and systematic oppression of the cultivating classes, of which however proof is, in my opinion, wanting.

3. The wet lands and the more fertile and improved dry lands are largely held on putta by persons belonging to the non-cultivating classes, who are frequently non-resident in the villages where they hold the lands. The holders are usually Brahmins and Chetties in the towns. The possession of land is sought as an investment of a secure kind, and the rate of interest expected on the principal sunk is very low. I am informed that the holders are well content with 4 or 5 annas per mensem on each hundred rupees, *i.e.*, about 5 or 6 per cent. per annum. The actual cultivators usually get leases running for four or five years, and when there are no leases, they work

on the sharing system, the most usual agreement being "Arthakandáyam," under which the Puttadar takes half the gross produce in grain and pays the Government demand. When the latter is paid by the cultivator, the landholder's share is usually one-fourth, sometime less, seldom more. The straw always goes to the cultivator. Good tenants under either system are rarely disturbed; they are too valuable to the land-lord, who frequently helps them in purchase of cattle or the like.

4. I think it is too hastily assumed that this system is new, and the result of British rule and the operations of the Courts. I believe that such arrangements have always been part of the "ancient custom" of the country, and I should like to see some proof of the assertion that thay have even extended under British rule. It is possible that too hasty generalization has been made from the known course of proceedings between money-lenders and the thriftless class of larger proprietors for the most part created at the permanent settlement.

5. To cancel all these arrangements and under-tenures by a stroke of the pen would revolutionize native society and amount to wholesale confiscation; while the existence of no evil, of which they are shown to be the cause, is proved, and it is doubtful whether the ends in view, viz., improvement of agriculture, and a more assured position to the ryot which would prevent him becoming a burden to the State in time of famine, would be attained.

6. It is not clear whether the proposal that the tenants shall compensate the landlord for the loss of his occupany right, which the Commission make in paragraph 32 of the extract, would be applied to the cases of sub-letting by occupancy tenants above described. I suppose they would not propose that the holdings should be cancelled without compensation, nor that the State should find the money; and therefore the compensation must be paid by the cultivators under some system such as suggested in the paragraph quoted. If so, it is certain that for many years to come any surplus which the ryot could secure would be absorbed in making these payments, and the fund for the improvement of the land would thus be decreased. These petty landlords are now, partly owing to the settled and secure character of the investment and partly from sentimental preference for it, content with a low rate of interest; and if they are peremptorily ejected, their interest must in fairness be capitalized at a very much higher rate than they now obtain. Also the fact that they must receive back their capital in driblets and not in a lump sum must be allowed for. Probably the rate of interest to be taken could not be less than 15 per cent., and the cultivating ryot would find the annual payments, over whatever period they were spread, a very heavy burthen. In fact, the proposal amounts to this that the cultivators should be compelled to purchase their holdings, and to be started on their career of improvement and amassing of capital with a load of debt about their necks. The cultivator's savings for a generation would probably go to this object and not to the improvement of his land. He would be for years impoverished, not enriched.

7. The abolition of the petty landlords under discussion would lead to diminution of agricultural capital in another way. These people are all engaged in trade or other occupations, and their savings gravitate towards agricultural investment. They would be prevented from applying funds to agricultural improvement under the new proposals. There is a further and by no means unimportant consideration, viz., that these people represent the brains of the agricultural mass, and that it is through them that improvement of lands or of native methods is most likely to be realized.

8. Even supposing the saving, represented by the landlord's right, to go direct into the ryots' pocket, the holdings are too small ever to enable them to hold such a surplus as to be able to pass through a real famine without coming on the hands of Government. The change would be too infinitesimal to make any difference in this respect.

9. As to the practicability of the scheme, I would ask what is a *bonâ fide* cultivator? There are infinite degrees of intimacy in connection with the land, from the man who himself holds the plough to the man who resides at a distance, never sees the land, and merely receives his rent charge from his sub-tenant. Where is the line to be

drawn? Who is to institute the interminable inquiries which will be necessary to settle the position of every registered landholder in the first instance, and who is to maintain the constant supervision which will be required to see that each cultivator retains his status as an occupancy tenant? It is futile to hope that the cultivators themselves will do the work by coming into the Rent Courts to enforce their claims. Their position is consecrated by custom and time, and they will not take the initiative in an attempt to change it. Even if the whole body of rent chargers are expropriated and abolished, a fresh body will be formed in course of time, and legal ingenuity will be baffled in attempts to prevent it.

10. So far I have been writing with reference to sub-letting by occupancy tenants, meaning thereby registered Puttadars in Government land, and holders of puttas under Mittadars. The occupancy rights of the latter are not questioned in this district, and the ruling of the High Court that the law does not recognize any such rights is not known. The right was expressly conceded in the early Ryotwar settlements which preceded the formation of the mittas, and it is recognized as attaching to all putta tenures since created in permanently-settled estates. It is equally clearly understood that there is no such right in the Jodigai Agraharam or whole Inam villages; the ryots of Trishvéka Agraharams are of course in the same position as ryots in ordinary Government villages. With reference to paragraph 40, I would observe that there is not the slightest doubt that in the settlement it was contemplated that Government ryots should deal with their lands as they pleased.

11. I fully agree as to the necessity of a revision of Act VIII of 1865, both with a view to make clear the position and rights of occupancy tenants, and to correct the confusion and uncertainty which pervade the Act and make it so difficult to work. But in the last sentence of paragraph 42, the Commission seem to think that occupancy right forbids disturbance in any event, whereas non-payment of rent is recognized as a sufficient reason for ejection.

12. I do not of course question the desirability in the abstract of giving security of position to the actual cultivators; but I am of opinion that proof is wanting of the existence in Madras districts of evils resulting from the present state of things, and of sufficient magnitude to justify the serious interference with rights of property and freedom of contract and the tutelage of the cultivating classes, which are involved in the proposals of the Commission. I believe further that the measures suggested would fail to produce the effect desired.

Read—the following letter from E. F. WEBSTER, Esq., Officiating Secretary to Government, Revenue Department, to the Secretary to the Board of Revenue, dated Ootacamund, 11th July 1881:—

With reference to the Board's Official Memorandum, dated 5th July 1881, No. 960, I have the honor to state that owing to the pressure of my current duties, I am unable to give the subject therein referred to that careful consideration which its importance demands.

Read—the following letter from J. MACARTNEY, Esq., Agent to the Rajah of Sandúr, to the Secretary to the Board of Revenue, dated Sandúr, 16th July 1881, No. 62:—

With reference to the Proceedings of the Board, No. 3,955, dated 13th April 1881, I have delayed my reply, not from any want of interest in the subject, nor from any deficient sense of its importance, but solely from a feeling of incompetence to discuss, with even a moderate degree of satisfaction to myself, a question of such intricacy and importance. Not having before me, *in extenso*, the report of the Famine Commission, I can only remark on such of the extracts furnished as touch upon matters with which I may have had more or less experience.

2. The evils arising from the subletting of land and living on the difference between the rack-rent and the privileged rate secured to the tenant by the law are such as doubtless call for redress. The practice involves a fraud on the community, which, in securing to the tenant permanent rights, the legislature could never have contemplated sanctioning. At first view I was strongly inclined to deprecate any measure which would seem to violate security of tenure, by probably allowing Government officials to step in and question the tenant's right to hold on by his ancestral land so long as he continued regularly and punctually to pay the Government demand. It seemed to me that a tenant who had fallen into dilapidated circumstances might be compelled to let out his land and to follow some other occupation for a time, but yet with the hope of being able subsequently to resume the cultivation of his paternal acres, and that a legislative measure which would effectively prevent the subletting of lands at more than the Government rate would meet the difficulty. But on further consideration it was obvious that the evil would only be partially met so long as the *bonâ fide* cultivator had no right of permanent occupancy, and that some limits should be assigned to such an unsatisfactory state of things. Granting that the actual cultivator, even at the rack-rent, which he pays, can manage to earn a bare livelihood, he would doubtless be relieved in a measure by a reduction in his rent, yet the insecurity of his tenure must ever operate so as to debar him from that improvement of the land, which is essential to the agricultural prosperity of the country. Without, therefore, positively prohibiting a tenant from sub-letting, he might justly, I think, so far be discouraged from doing so, by the rendering illegal of any agreement, between him and the actual cultivator, which imposes on the latter a rent exceeding the Government rate, and in way of penalty by making him liable to a fine of double such excess. After a limited period, considerately fixed, if the Government tenant is still unable to resume the cultivation of his land, in the interests of the community at large, his right of permanent occupancy, the benefits of which he confessedly cannot avail himself of, might fairly be transferred to the *bonâ fide* cultivator. On this supposition the Government tenant would be no loser in a pecuniary point of view, as he would have degenerated to the mere position of a *medium* through which the rent of the land reaches the Government Treasury, while, by continuing to hold on, he deprives the cultivator of the legitimate fruits of his industry and enterprise, and the community of the benefits which might accrue to it from a superior style of husbandry.

3. For the improvement of the ryots' position, I am disposed to regard the diffusion of education among them as of the highest importance. The recent increased efforts of the Government in this direction, by the supervision and encouragement of primary schools, may reasonably be expected to lead to the most beneficial results. The ordinary ryot can neither read nor write, and he is, of course, utterly ignorant of figures and their value. As he is always impecunious, he his ever borrowing, and is seldom, if ever, out of debt. He is readily induced to agree to a rate of interest, which, if he understood the simplest operations of arithmetic, he would see to be simply ruinous. He is wholly dependent on his Soucar for all knowledge as to how he stands, and, not being able to question anything, is easily lead to sign bonds for sums involving items of heavy interest, and bearing equally burdensome interest for the future. Thus his crops often are mortgaged in advance, and he continues to live and cultivate on occasional advances from his creditor, and thus all the profits of his labor are absorbed by the latter, while he himself can never attain a position of independence and comfort. Until at least he is better educated, the law might help him in his struggle with rapacious creditors, by enacting that all consolidated bonds in agricultural districts should specify the several items of which they are composed. In case of litigation, such a provision would be some check on unscrupulous money-lenders, while it would enable the Court to determine whether the accrued interest was legitimate and did not exceed the aggregate principal. It is also open to question whether the law as administered is not too expensive in its processes. It is true that the Government cannot afford to administer justice at a loss to itself, but it is equally obvious that it ought not, to any considerable extent, gain thereby. It appears to me to be worthy of consideration whether the

heavier expenses of litigation in country districts might not often be avoided were Judicial Officers authorized, with the consent of the parties, to act as umpires between them. The ryot seldom questions his liability to fulfil the conditions of his bond, and an arrangement might often be come to in the first stage of litigation, if the inflexibility of the law did not present a hindrance.

4. Another consideration may be mentioned, which, though it bears only directly on the position of the ryots, may be regarded as of some importance. I refer to the increasing want of sympathy between them and their immediate rulers. In former times it was the practice for Revenue Officers to be appointed to districts where they were allowed to remain for a long time, and where some of them gradually rose to the highest positions in the service. Mr. Pelly may be cited as an instance in this district. They thus acquired in the course of their service a special knowledge of the district, the people, their language, their wants, and their general condition. They naturally took a deeper interest in, and were much more accessible to, them, and came often to be regarded as their friends. The frequent and sweeping changes which are now made in the administrative staff of districts have strongly tended to subvert this desirable state of things.

5. The tenant-at-will system is unquestionably a serious evil, and most hurtful to agricultural prosperity, and I am strongly inclined to the opinion that some such measure, as is proposed by the Famine Commissioners, might do something towards remedying it. I can scarcely hope that it would completely meet the case, for, although the law were to offer such facilities for the acquisition of security of tenure, it would still remain to be seen whether the cultivators generally would avail themselves of its provisions. It may, however, reasonably be presumed that a large proportion of the best and most thrifty ryots would gladly do so. The danger, as it seems to me, would lie in over-estimating rather than in under-estimating the amount which the landlord really gains by his tenant not having occupancy rights. It is quite clear that the system tends to impoverish the land and deteriorate its value, in fact to keep it at a *minimum* of productiveness. Now when bad seasons come, the tenant already sufficiently weighted, probably finds himself unable to cultivate, gives in his razinamah, and retires from the struggle. The land is either for a time thrown out of cultivation, or is again rented in the most unfavorable circumstances for the landlord. It may therefore be assumed that it would be for the interest of the latter in the long run to fix an equitable rent, and give the ryot that security which can alone ensure to him the fruits of his labor and expenditure.

6. Not having any practical knowledge of the working of the law as mentioned in paragraphs 41 and 42, I would rather decline to remark on the subject.

Read—the following letter from J. F. PRICE, Esq., Collector of the Chingleput District, to the Secretary to the Board of Revenue, dated Saidápet, 16th July 1881, No. 273.

I HAVE the honor to reply to the Proceedings of the Board of Revenue, Miscellaneous No. 3,955, dated 13th April last, and to express my regret that, owing to my having been on leave and to my time having since my return been fully occupied with other matters, I have been unable to do so at an earlier date.

2. I do not quite comprehend upon what precise points an expression of one's views is sought. The drift of the remarks of the Famine Commission is, I take it, that it would be desirable to give all actual cultivators of the soil, who are sub-tenants and occupiers, some permanent rights of occupancy in order to enable them to meet times of distress, thus improving their status, to put down rack-renting, and to place Curnams of settled estates in such a position that they would have to render accounts to Government whenever required.

3. It would, no doubt, be highly desirable if something of the kind suggested as regards sub-tenants and occupiers could be done, but any decided move towards

such an improvement would be met by covert opposition and intrigue to an extent which, I feel assured, would be far greater and more prolonged than would seem to be anticipated.

4. Madras Act VIII of 1865 is an enactment, which is supposed to guard the rights and to protect the interests of tenants and sub-tenants, having due consideration, at the same time, for those of landlords. My Sub-Collector, Mr. Farmer, is drawing up a paper in which it is proposed to bring forward some of the iniquities which can be perpetrated under this Act and to show what intrigue and misrepresentation on the part of persons connected with the landed interest in this very district took place when the Bill of Act VIII of 1865 was under consideration. This I shall submit in due course for perusal.

5. The whole Act requires careful revision and alteration. Whatever may be *implied* by it—the ablest Civilian Judge, who has ever sat upon the Bench of the High Court of this Presidency, once remarked to me that it was the most difficult Act in the Statute book to comprehend—it is practically in favor of the landlord and against the tenant, and the former has, as far as I can see, not been slow to perceive his advantage and to avail himself of it. It is the weak who should be protected against the strong! it is the strong who are enabled by the law ostensibly designed in the favor of the weak, to oppress. In this assertion I believe that I should be borne out by the experience of every officer who has ever had any practical acquaintance with the Act.

6. It would be a very difficult task indeed, desirable though it might be, to give effect to the suggestions of the Famine Commission in regard to occupancy tenants. This class of persons is, as a rule, poor; they live from hand to mouth and are liable to be at any time turned out without a penny of compensation for improvements made. They are very frequently ground to the dust by the landlords, who make them pay for the actual tenants by seizing their crops, &c., in satisfaction of arrears of rent, and they, generally speaking, are so impoverished that they cannot afford to fight their cases in the Revenue Courts and those to which the judgment of a Collector can be taken in appeal.

7. A step towards improvement of their condition would be effected, if it was made illegal to attach crops, &c., unless it could be shown that they were grown by, or the actual property of, the registered tenants. Much good might also be done by removing entirely from the scope of Act VIII of 1865 all cases involving sub-leases, or sub-tenancies, and declaring that rents due under such contracts would be recovered only by suits in a Civil Court. This would apply equally to lands held under a Government putta or in a settled estate.

8. I consider the petty zemindaries, muttahs, shrotriems, and inam villages, with which the country is strewn, one of its greatest curses from an agricultural point of view. I add to these in this district the mirassi system, which has for years been a bar to improvement. The mode of collecting the arrears of revenue due by the owners of the properties mentioned above is cumbrous and lengthy, whilst on the other hand the powers which the law gives them to screw their tenants and harass and worry sub-tenants are very considerable.

9. If all rents in kind were abolished and a money-rate insisted upon in all settled estates, &c., another very fruitful source of tyranny on the part of landlords and of suits in Revenue Courts would disappear. This would require a survey and settlement, but I do not see why Government should not, except in the large and ancient zemindaries which are hardly in the nature of tenancies, enact that this should be done, and that all charges for second crop, irrigation of dry lands from tanks belonging to proprietors, &c., should be the same as in Government lands. Certainly one half, if not more, of the suits which come into Revenue Courts, arise from there being no fixed money assessment, and it is not by any means an infrequent occurrence for landlords to drag tenants and sub-tenants into the Criminal Courts on the ground that they fraudulently carried off a portion of the crops to which they were not entitled.

10. As regards the question of Curnams, it appears to me most absurd that an individual, who is practically a private employer, cannot, though he can appoint a servant of this class, get rid of him except by a Civil Suit. I think that the nomination to the office of Curnam in settled estates should lie with Zemindars, but that in the interests of the State, the power of appointment and dismissal should lie with Collector of the district, who should have authority to compel such Curnams to, whenever called upon to do so, submit such statements, returns, and accounts, as Government may, from time to time, direct.

11. As regards the remarks made in paragraph 40 of the Commission's observations, I would advance that the Land Revenue Settlement could hardly have contemplated that ryots were not to sublet. If this had been the case, Clause 3, Section 1, Act VIII of 1865, would have been uncalled for. I do not see what advantage could be attained by the suggestions made in the concluding portion of the paragraph quoted above. The present arrangements would only reappear under a different form, the sub-tenants being called the servants of the tenant, instead of what they now are.

12. The subject of allowing long possession as a sub-tenant, or certain other circumstances, to give an actual right of occupation, is one which, unless Government wish to raise a nest of hornets about their ears, must be entered upon with considerable caution. I think that, for the present, it would be enough to curtail the powers which landholders have under Act VIII of 1865, to force all tenants sub-letting to recover their dues in a Civil Court only, to protect, and that very closely, the property of sub-tenants from attachment and sale on account of rent due by the registered tenants, to abolish all rents in kind and compel the introduction of a survey and money rates in all shrotriem, inam villages and permanently-settled estates, not being ancient zemindaries, and to bring all Curnams in zemindaries, &c., under the control of the Collector.

13. To carry out these measures, if deemed feasible and desirable, would probably take some time and would pave the way for, at some future period, legislating upon the question of occupancy right, if it was found that the alterations in the Act, &c., suggested, did not render the position of cultivating sub-tenants sufficiently secure.

Resolution—

By the order contained in the Board's Proceedings quoted above the Government refer for an expression of the views of the Board certain extracts from the report of the Famine Commission relating to the position of cultivating tenants in the Madras Presidency. These extracts embody the opinions of the Commissioners upon the questions of the sub-letting of land for cultivation and the position of tenants in relation to their landlords.

2. Regarding the question of sub-letting the Commissioners, having stated that the occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator, proceed to discuss the means by which, in their opinion, it might be possible and desirable to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights; and they recommend that the practice of sub-letting by an occupancy tenant should be discouraged or even forbidden; and further that, when such right is possessed by a tenant, it should be forfeited by his ceasing to be a *bonâ fide* cultivator and pass to the person who, as his sub-tenant, occupies his place.

Paragraph 31.

3. Upon these recommendations the Board observe that whereas their object is to prevent rack-renting by middle-men and the oppression of the cultivator, it has not been proved that the evil which it is desired to remove exists in this Presidency to such an extent as to justify a measure confiscatory in character, and which, if it were possible to carry it out, would involve the complete subversion of established rights and customs relative to property in land. Nor is it apparent how the remedy proposed would have the effect of materially improving the cultivator's position; for, if it prevented him from having recourse to the money-lender in time of need, the benefit would be by no means unmixed either to himself or to the community; unable to borrow

he would be unable to till and loss would be the result to both. The Commissioners seem to be somewhat uncertain whether their proposal will be found practicable, and the Board have no hesitation in stating that it would be quite impossible to put it into practice. Throughout the world, it is in the natural order of society that some men possess capital and some do not; the former become owners of the land and the latter rent it from them or work on it for hire. Such an enactment as that proposed would only cause a temporary disturbance of existing relationships, which in process of time would revert to their original state.

4. In the next paragraph the Commissioners make suggestions for securing to tenants-at-will occupancy rights in the lands which they hold without injury to the landlords. Unless the word injury is here used in a restricted sense, it is difficult to conceive how this proposal is feasible. The Commissioners, however, explain how they would propose to carry out the measure, viz., by making the tenant pay an enhanced rental, the increase being calculated with reference to "the annual amount which a landlord gains by his tenant not possessing occupancy rights." The Board believe it would generally be found impossible to frame an estimate in the manner described, and even if it were possible to do so, the advantage to the tenant would be doubtful. Upon this point attention is invited to the remarks of the Collector of Salem with which the Board entirely concur.

Paragraph 32.

5. Turning to the first paragraph* of the second extract, it is hardly necessary to say that power† to sublet is the undoubted right of every holder of land under a ryotwari putta. This right and that of transfer by sale are essenfial privileges of the holders of land under the ryotwari system which should on no account be interfered with. As regards the proposal that sub-tenants should be recognized and the area, &c., of their holdings recorded in the accounts kept by Government, the Board consider that such a measure is neither necessary nor expedient. Such registration would not affect the status of a sub-tenant, while it would throw upon the Revenue establishments, already over-worked, an enormous amount of additional labor.

* Paragraph 40.

† Board's Proceedings, dated 22nd March 1881, No. 473. (G.O. dated 18th July)

6. The remaining paragraphs‡ requiring notice bear upon the relation of Zemindars and Inamdars to their tenants. The amendment of the Rent Recovery Act (VIII of 1865, Madras) has been proposed on former occasions, and the Board are of opinion that the revision of that enactment should be no longer delayed. The object to be kept in view should be to define existing rights as established by customary usage and make provision for their enforcement, and not to create by statute new relationships between land-lord and tenant. In connexion with this part of the subject the Board would refer to their Proceedings§ noted in the margin and repeat the recommendation made at paragraph 8 thereof.

‡ Paragraphs 41, 42, and 43.

§ 7th March 1879, No. 618.

(True Copies and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department.
Copy to all Collectors.

Exd. A. Grubert.

Revenue 1881 Septr

No 5164

1881.
Board of Revenue,
MADRAS.

To

THE SECRETARY TO GOVT.,
REVENUE DEPARTMENT.

Printed September 27th.

Received 28th

PROCEEDINGS, 26TH SEPT. 1881, No. 2,122.

SUBMITTING remarks on certain extracts from the report of the Famine Commission relating to the position of cultivating tenants in Madras Presidency.

C. 20-2-82 — R 18-2-82
C. 18-2-82 — R 22-3-82

R.D. No. 2876.

Rect Bd 26. forwarding to Govt. extracts from Colr's on the effect of the ruling of the High Court in Special appeal No. 9 of 1880 regarding Ejectment of tenants by their Landlords.

Item entd No. 6166 March 7th/29.

To order.

Nearly eight years ago the High Court passed a decree in an appellate suit which has considered to decide that Zemindars only had no occupancy rights but were merely Tenants from year to year. About 4 months afterwards the Bd Rect called for the opinion of Govt. & the Revenue authority as to the High Court's proposed that legislative measures should be passed to prevent misbehaviour that the rights of Zemindars possessed over tenants occupancy rights.

About 4½ years after-wards the Govt called

the Revd. Bd. before any steps are taken in the direction suggested by them, to enquire and report whether the results anticipated by them in the last para. of their report* could be secured within the Revenue Collectors & their divisional offices.
This was in Oct. 1876.
The Bd. address Collrs. to report-under reply & to submit their replies practically, the result of the enquiries is that the Revd. Board cannot accept any one of the 3 Divs. - Jessore, Vizag. - apdam & Nellore & High Court's ruling is Law respecting them.
"Ramalingam" i.e. "Custom law for boundary & hold on Landlord & tenants relations in this part of the Madras for any ruling of

* The crisis is undoubtedly for any ryot can now be turned out of his holding at the end of Fasli -

a High Court & Madras Board may relations existing between them -
Of these 3 Divs. in Jessore there was no specific custom of ejectment upon the simple of the High Court decree & the usual & penal charges & exactions practices hereditary & binding between landlord & tenant, & probably had, their origin in the Zemindar's natural exercise of his Revenue & the High Court's decree -
In bringing opinion appear to differ whether the High Court's decree changed the law & gave legal sanction to the previously existing practice - & this pivoting the key note of the whole discussion.
All the parties consulted by Govt. agree, however, in admitting that the decree has not changed the rights of parties - & common sense & law for it has no power of time as long the practice
Mr. Sec. Lewin Dist. Collr

on Vij a spoken from
Plaintiff that Dixon the
Steward the Court's pass
Power of ejectment
ag[t] Defendants
on proof that the term
of the Lease has expired
If this is so then the Plaintiff
Ejectment in Vij ag[t] is
Peremptorial.

The Coll[r] of Nellore
does not know that the
Lands of Lands formerly
held under Pycarum
Pattah — but knows
Lands which the
Civil Judge, with such
Equity, considering him-
self bound under the
decree, & Order of the
Country 73 years
standing on his ground
that his Lease was
from year to year &
determinable at the
close of any particular
Fasli.

The B[d] although they
admit that there is
much Salt in the Nellore
Sold by the Coll[r] of
Cuddapah & the term
of Vanchatapiu & the
Appellants the High
Court is only desirable

for the Liquor by Lying
Down that any Tenant
can be evicted at the
Caprice of the Landlord
pleaded. That if the
Law & practice of Eject-
ment ordering the Land
to resume such Lease
shown it has been held
in by Landlords.

Plaintiff insists that the
Relation of Landlord
& Tenant does not exist
between Plaintiff &
Appellant — Appellant
Officer or a Committee
of the Inhabitants to inspect
into Boundaries, the
Nature of Tenancies &
Times of Payment & other
Matters which they
found —

The decree of Justices
upheld by the Privy Council
by the Chief Justice
& Mr Justice Holloway.
Their Lordships think
from the construction of
the agreement between
parties to find that it
follows that the
Plaintiff's Possession
absolutely right to possess
as against the Company

at the end of a sali
"unless the condition
"relied upon by the
"appellant was by
"some act or
"forbearance made
"part of the contract
"tenancy" shd that
particular case not
be fatal pleaded in
defence of the suit-
the appellant resisting his
right of perpetual
occupancy, refusing
he paid his rent; as
Reg: XXX 6/1802, Reg
T 6/1822 & Kinder
all VIII 6/1865.
The Court held that
Ken Lan did not
give him knight
to claim adverse
ag.st him. And
he pleaded establish
general custom that
possible tenant
might not have been
ag.st him. until
the High Court decid-
is a case which
shd contain into
pleaded that it

also fails to secure a
tenancy accompany right,
which I doubt, it cannot,
in my opinion, be held
that the point is clear
decided that minor
right can under no
circumstances dual
right. but it is clear that
the statute took does
not confer or secure
them such rights as the intend
since the passing of Wallace
or the Law in 1893
as he did (overlooking the
my mistake) point
ruling of a similar
claim in the
interior & the case itself,
(for it seems to have gone
back to the very beginning
of the century & before the
permanent settlement
with Princes &
officials) & seems evidence
does not go much further
appointing a special officer
to enquire & report
which would, if a study
is made of all, is a
law, of which there
are 2 or 3 bills in the
Legislature until.

The thing is clear that much of the excitement prevailing in the Bd. Proc of 1871 in which they first brought the matter of the decree & judgment of the select of Govt. had its origin in the discovery of the falsity of the dictum "Once a pattahdar always a pattahdar" — a dictum with about as much truth in it as Dr. Johnson's saying that "allodiums fall on of themselves by default". The real position is this "Once a pattahdar a pattahdar as long as (the pattahdar) he pleases" (at least so far as Govt. ryots are concerned) which is a very different thing from the first dictum & a very one sided statement of affairs it results for while the ryots can throw the pattah up at the end of any Fasli he chooses the Govt. have repeatedly declared that they will not ...

... ryot as long as he pays his land tax. ... This is ... the Govt. action to recognize ... ryots as tenants & themselves as landlords only ... claim a right ... in the produce of the soil, but if it is borne in mind that what rights the Zemindars have they acquired from Govt. it is difficult to see how the Govt. could now be in a different position towards their ryots to what Zemindars ... had not ... announced that position ... to be ... by ... the ... the more ... a landlord's ... right of Govt. ... is ... by ... lapse of time as may ... a ... right ...

[illegible]

?/29

Revenue (1882) Dept.

Proc. 29th April 1882

G. Rec. 437–438

Revenue (1822) Def
Proved 29th April

in the land is Equitable
strictly limited by express
conditions

And it does not thereby
vest in the State any
right or title to the
lands of Zemindars or Lamindars
or of the artificial tenures.

Should it be necessary strictly
to limit the State claims
to the Rents & Profits
arising from such a Settlement
& to bind each Discharge
to the State Dues.

The State Dues are to be
established by an accurate
& Examination into the
Opinion that the enactment
the maximum of Rent
be exceeded even by special
contract.

It seems scarcely
necessary to say that the State
Right to retain the
forbidding of the Cultivation of
Cultivation is to remain in Force
[illegible] the Granting of Pattas
& the Exchange of the Pattas by

of this Limitation be safeguarded
by an efficient Court.

The case is however very strong
with the Country Gentlemen
in the Interest of the State.
or the Interest of the
Zemindars or Lamindars.
but it needs little discussion.

My own view is that Rent
on the Land & Profits
are Property in the Land
Zemindars in the Civil Code
the State or Crown Lands
Should be Limited. & Land
Tax to be admitted. & Land
Revenue & Land Tax established
from Time to Time as Rent
in the Province of the Zemin-
Crown & Land Tax
Crown & Zemindars - or Land
Land mainly [illegible] the
[illegible] & [illegible] Rent.

I am extremely sorry
to hear of Mr. Clerk's
Illness & the cause
I have not seen Mr
Colebrooke in Town or
Country & have not
Papers. & I have not
Report. & I have not
from Mr Prinsep &
Act. Have I Papers
incidental Questions by the
Act & the Law Officers. such
as that the Capital is a Lease
& Stock Mischievous
& Land or Money Securities.

in the land is ...

I admit that the doctrine covers to such questions.

A Zemindar for instance may possess both the Ryot's property & the assignee's state rights.

And the question of his relation to his tenants may assume a far more intricate position than that of a Ryot & his subtenant.

But such exceptional cases are comparatively rare. & in this Province at least, attain sensible proportions com-paratively speaking.

To recognise & affirm assent or uphold the true relations of the Ryot

but considers these of little importance if one will study the question & recognise the first principles [illegible] & the history of the development.

The "Puttah" is nothing but an extract from a village Register of holdings & it does not [illegible] As the [illegible] think [illegible] it is [illegible] manifest [illegible] of [illegible] holding [illegible]

The Puttah established [illegible] sometimes [illegible] leases & grants [illegible] and [illegible] to Ryots [illegible] landlords of [illegible]

[illegible] be admitted [illegible] cannot [illegible] conclusive that the Puttah right is derived from [illegible] centuries.

ago. When Puttahs were [illegible]

[illegible] continued [illegible] all the Puttahs in the country were converted into [illegible].

I have known all the [illegible] in Canara [illegible] these "puttahs" were [illegible] saying they [illegible] at all.

because a Lord [illegible] "Mogulai" [illegible] in them [illegible] had.

& the sirkar or its assignees as joint proprietors in the soil. with mutually defined rights. would so conclusive at once take the question out of the political phase.

There will still however remain the question of subtenants & the rights that may properly be assigned to them. & this is highly important, but it [illegible] admits of being dealt with [illegible] more regard to general considerations than does the former. But I am by no means sure that it is one [illegible] at the present time at any

that they

Lamdans,
Inandans,
Jafendans —
to have the Lo no
interference between
them & their sub
Tenants —
The Governor shd
see them right —
J M.

REVENUE DEPARTMENT.

No. 2257 & 5764

From M.M.Ry P. Chentsal Rao Pantulu Garu & the Board of Revenue

Dated 27 April & 26 Sept 1881

FOR ORDERS

G.O. 18 March 1881 No 475 was communicated to the Board and General Gentlemen for an expression of their views on the questions raised by the Famine Commission as to the position of Cultivating Tenants & Ryots.

Replies have already reached Govt only from the Board & the Circuit Rao.

The papers are now circulated with reference to the allusions to the subject in Board's Pro: 27 Sept 1881 No 2132.

The Board's views quoted in the Extract of the Famine Commissioners' Report printed with G.O. No 475 will be found at Pages 146-55 of their Replies to the

I have merely to mark that my views on this subject tally in the main with those of Chentsal Rao Garu as recorded in his Report.

S.V.

As I have said already - I consider our Pattadar the Crown tenant in capite; and I would have no interference between him & his cultivator - In the 1st place there are very few of them who do not cultivate the land themselves; 2dly when they have people

C. No. 5,163/81.

cultivating for them, they treat them well: 3dly their position is quite different from that of Zamindars & Inamdars - the assignees of the public revenue from land.

II - As to the Zamindar's tenants, I have never touched on their mutual position, but at the time Act VIII/65 was before

Hon. W. Sudderland's note on the papers referred to in G. O. 18th March 1881. No 475

I do not see why the Government should not fully recognize the obligation of the Ryot to cultivate his land (including his fallows) for 12 years but

Famine Commissioners' Report

Ryots of Income;

the question of assessment is a

subsequent one - Government can if they think fit

remit the whole assessment but

Ryots have a

right of occupancy

when I suppose they

who have been in possession of their land (including their fallows) for 12 years but

Famine Commissioners' Report

Ryots of Income;

the question of assessment is a subsequent one - Government can if they think fit remit the whole assessment but Ryots have a right of occupancy when I suppose they

I have no time to enter fully into the Chief Secretary's questions; & I am not sufficiently acquainted with the Ryots' circumstances to express a decided opinion on the subject. I should however say that the Ryots have a fixed hereditary right to their lands, which they cannot be deprived of so long as they pay the assessment fixed by Government. I do not think that Government has the right to raise the assessment on the Ryots' lands, except in the case of a general increase of the assessment on all lands in the district, or in the case of a Ryot who has been in arrears for a long time, and who refuses to pay the arrears due from him.

II - As to Occupancy Ryots, i.e. - our Ryots & their tenants; I think that the Government should not interfere with the relations between them, except in the case of a general increase of the assessment on all lands in the district, or in the case of a Ryot who has been in arrears for a long time, and who refuses to pay the arrears due from him.

Circular (Chap 1) of the Famine Commission.

Mr Justice Innes & Wigod, also alluded to in the Extract in G.O. No 495 dated 20. probably these continued in his Judgment in Takir Mahomed v. Perumalachari.

The Judgment of Scott & Holloway also decided by the Hon'ble Mr Huddleston's Note of the 17 March Cases reported at pages 164–174 Volume 6. Madras High Court Reports.

Share copy of Board's Pro. 7 March 1879 No 618 alluded to by the Hon'ble Mr Huddleston & the Hon'ble Mr Arbuthnot in their Notes dated 17.3.81 and 3.4.81 in Pentapa

E C C
11/10/81

the Legislature Council, and afterwards in 1871, when [illegible] in the Bd of Revenue.

The Act, it was supposed, secured to the tenantry (1) fair rents and (2) security of tenure. In 1871 however a Judge of the High Ct decided that no security of tenure was secured to them.

It seemed that it was at least

Indian Law Reports Madras Series. Vol. I Page 205.

(the intention of the Legislature to secure it; and that we must suppose to the Act to be immediately effective for five years during which it was kept to that purpose. Mr Arbuthnot in his Note: when the Report was received, he forthwith handed it back. It was then sent out for observations of the Collrs.

Meanwhile I have recently had an opportunity, during my tour in the

C. No 2876 of 79.

district of making my own observations. I find that in every Zamindari, even in Vizagapatam, where [illegible] is a blank, a only [illegible] Rs 1 lakh – every yearly Patta runs "at the end of this term I have "no further claim to occupy this "land". The Ryots understand very well that they are liable to be ejected up on [illegible] the increased rent – on the

* Vizagapatam, Ganjam

fear of being turned out, if they stand up for the rates we are declared the proper ones in that unfortunate Act, the ryots are in that state that we must have some Act to secure – the Legislature meant to secure – security of tenure –

We must have for the Legislature to be done the better

Dec 14/81.

I think we are all fairly agreed on this subject. The evils of [illegible] pronounced by the Govt of India call for [illegible] Act. The proposed Bill is case of Sub-tenants is extended. That the [illegible] proposed. The [illegible] tenure of occupancy [illegible] the Under Secretary of State in Council in the Revenue Dept has limited the "perpetuity right of Ryots" – The Govt of India to clear the ground by Local Legislature. The Zemindar is

... the assignee of State rights. The State could not confer on others what it did not possess itself ... the rights & demands ... the State share of the produce of the land ... the "occupying right" ... this limited demand. The Law should be amended & established beyond question this ancient ... of late years unquestioned position.

The reservation of ... the State ... required for State or Public purposes ... prescribed by law ... has long been ... complicated by other proposals regarding village service.

[illegible]

C 11-10-81.
20-10-81.
20-10-81.
20-10-81.

[illegible] 9/10/81

FOR ORDERS.

C. No. 5764

[illegible]

Draft G.O.

Read again G.O. dated 13th March 1876 No. 366.

Read also:—

C. No. 2876 of 1879 { Boards' Prop: dated 7th March 1879 No. 618.

G.O. dated 18th March 1881 No. 475.

" " 2251 of 1881 { From Mr. P. Chentsal Rao dated 27th April 1881.

" " 5764 " " { From the Board of Revenue dated 26th September 1881 No. 2122

Minute by the Honble W. Hudleston.

Do by the Honble D. F. Carmichael.

In the first of the papers read above the Govt called upon the Board of Revenue

to enquire and report whether the results anticipated by them, as affecting the fixity of tenure of the Zamindari ryots, from the judgment of the High Court in Special appeal No 9 of 1870, had ensued and to what extent, and the second paper is their reply. The third embodies a letter from the Govt of India asking for the opinion of this Govt on certain suggestions made by the late Famine Commission for improving the position of tenants in this Presidency. The following two papers

* Volume VI. Madras High Court Reports pages 164–174.

are the only replies yet received to the order of this Govt inviting remarks on the Suggestions last referred to.

2 The Famine Commission, in the extracts from their report printed in the G.O. of 18th March 1881, refer particularly to the custom of subletting by holders of occupancy rights, which they consider to be attended with ill-consequences, and suggest that it should be discouraged, or even if possible, forbidden*. They also, adverting to the High Court's judgment above referred to, point out the expediency of

* paras 31 and 32.

legislation in view to the protection of the occupancy rights of the Zamindari ryot. [x] paras 41–43.

3. The far more momentous question last indicated will be ~~taken up~~ first. Whatever may be the precise scope and effect of the High Court's ruling, there seems to be no longer any room for doubt that it has been judicially interpreted, though yet within a limited area[*], as declaring the tenure of a Zamindari ryot terminable at the will of the Zamindar at the end of the year and has had the effect

[*] In Vizagapatam generally and in one case in Nellore, vide Collr's letter reported in Board's Proc. dy 7th March 1879 No 618.

2/

Rec. 12

over a more extended area, of enabling the Zamindars to impose arbitrary terms and levy enhanced ~~rates~~ rents from the ryots. It is clear, therefore, that Madras Act VIII of 1865 has failed to assure to ryots holding of the assignees of the public revenue that permanency of tenure, as well as security against exaction and oppression, which that enactment, as likewise the Regulations of 1802 and 1822, which it contemplated and abolished, was intended to assure to them.

[x] XXX of 1802.
[*] II & V of 1822.

4. The position, having regard to the magnitude of the interests involved,

is ~~pregnant~~ fraught with anxiety,
and the Right Honble
the Governor in Council
is satisfied that remedial
measures cannot be ~~duly~~ de-
-ferred any longer - &c
accordingly resolves to
appoint a Committee
composed of the Gentlemen
named in the margin
to ~~draft a Bill calculated~~
~~amend the present~~
~~Act~~ to remove all doubt
as to the ~~Laws of exemption~~
~~conditions of the Settlement of land~~
~~such a right proceeds~~
processes with liberty to
dispose of such right
by sale, gift
or otherwise, until evict-
-ed by due course of
-law for failure to
discharge such legally
~~the~~ established
-ed and limited ~~rent~~ Charge
or to enter into an
agreement in the form

prescribed by law in
with respect to such
limited ~~rent~~ charge.

5. The Bill to be now
framed should be a
complete substitute for
the present Act, embody-
-ing all the provisions
therein contained for
determining the rates of
rent, for enforcing the
exchange of Pattas and
Muchalikas and for re-
gulating distress and
sale, as well as ejectment
in case of default
in the payment of rent.

6. To guard against
the possibility of the
distinction between a
Ryot proprietor and
a sub-tenant being
overlooked, the Govt

would exclude all provision, such as is contained in section 13 of the present Act, for enforcing specific contracts with actual cultivators who are not ryot-proprietors. They doubt whether the question of sub-tenants and the rights that may properly be assigned to them is one which at the present time, at any rate, calls for state interference, and it appear to them that, until summary procedure for the protection of sub-tenants is proved to be necessary, it may well be left to the ordinary judicature.

7. A Zamindár or Inámdár may possess both the ryot-property and the assigned State property; but such a case would not come within the purview of a rent-law, restricted, as the proposed enactment is intended to be, to the relation of an assignee of the public revenue and the ryot-proprietor holding under him. The Govt considers, however, that as suggested* by the Famine Commission, the Act should provide that all tenancies in Zamindári or Inám lands prima facie carry a right of pas-

* para 42.

prietory occupancy, and should throw on the Zamindar or Inamdar the onus of proving the facts from which a non-occupancy tenure has to be inferred. In like manner, where a special contract at the time of first occupancy, reserving to the superior holder the right of eviction or a higher rent, is alleged, the onus of proving such contract should ~~be made to~~ rest on the party pleading it.

8. As regards the question ~~Custom~~ of sub-letting

the Government fully agree in the views expressed by the Collector of Salem and the Board of Revenue as to the inexpediency of any State interference. Whatever ~~may be the~~ ill-consequences of such a system, due perhaps to the peculiarities of tenure in Oudh or in other parts of India, none such are apparent in this Presidency. Here, in the first place, the number of ryot proprietors who do not, ~~personally~~ cultivate themselves, is comparatively small; secondly, where they have ~~such~~ sub-tenants cultivating for them, they treat them well; thirdly, their position is quite different from that of Zamindars

and Inamdars – the assignees of the ~~public~~ Govt revenue from land.

9. The Famine Commission assume a state of things under which "the privileged tenant" has no interest in improving the land, but such is not the case in this Presidency, where the ryot fully appreciates the benefits which accrue to himself by the improvement of the land, which is his own property subject only to a limited charge for State dues; his available resources are a rule ~~are~~ devoted to its improvement.

In this Presidency

10. ~~The~~ The ryot possesses in fact the ~~possessory~~ privileges to all intents and purposes the "bona fide cultivator" to whom the Famine Commission desire to restrict the occupancy right. If, however, by "bona fide cultivator" they mean that person only who actually holds the plough or personally ~~carries~~ labours on cultivation operations, the measure which they recommend, viz: "to prevent any one who is not a bona fide cultivator from acquiring or retaining such rights" would be subversive of ~~private~~ land property throughout the Country, and, ~~sold~~ with by depreciating the value of land

in which the important ques-
-tions of occupancy right in
Lammidam and Inam lands
and of the Customs of Sub-letting
by proprietary occupants
have been fully discussed.

2. It will be seen that
the Right Honorable the Governor
in Council, having regard to
the magnitude of the interests
involved, has come to the con-
-clusion that the existing Rent
Act should be amended so
as to place beyond all question
the right of occupancy which
the general body of proprietary
Cultivators known by the
name "ryot" have held in
this country, unquestioned,
from time immemorial, and has appointed a
Committee for that
purpose.

3. On the question of
Sub-letting, for reasons fully
explained

explained in the Proceedings
referred to, this Govt: see no
reason or justification for
State interference between the
ryot-proprietor and his
Sub-tenant, where the former
is not himself the actual
cultivator.

E. C. C.

Rev: Dept:

Land Revenue 214

Draft G.O. No 4 of 8/29 March 1882

Read again G.O. dated 13th March 1876, No 366.

Read also:-

Board's Proceedings, dated 7th March 1879, No 618.

G.O. dated 18th March 1881, No 475.

From Mr. C. Schuntzel Esq, dated 27th April 1881.

From the Board of Revenue dated 26th September 1881, No 2122.

Minute by the Honorable W. Hudleston.

Do by the Honorable D. F. Carmichael.

In the first of the papers read above, the Government called upon the Board of Revenue to enquire and report

G.O. No 2876 of 1879.

" " 2251 of 1881.

" " 5164 " "

Original Draft

C. 20-2-82 R. 16-3-82
C. 18-3-82 R. 23-3-82

report whether the results anticipated by them, as affecting the fixity of tenure of the Zamindari ryots, from the judgment of the High Court in special appeal No. 7 of 1879,* had ensued and to what extent, and the second requires their reply. The third embodies a letter from the Govt. of India asking for the opinion of this Govt. on certain suggestions made by the late Famine Commission for improving the position of tenants in this Presidency. The next following two persons are the only replies not received to the order of this Government inviting remarks on the suggestions last referred to.

* Volume VII. Madras High Court Reports, pages 186-196.

2. The Famine Commissioners in the extracts from their report quoted in the 3rd of 18th March 1881, refer particularly to the circumstance of subletting by holders of occupancy rights which they consider to be attended with ill-consequences, and suggest that it should be discouraged, or even if practicable, forbidden.* They also advert to the High Court's judgment above referred to, and the expediency of legislation in view to the protection of the occupancy rights of the Zamindari ryot.

* Paras 31 and 32.

3. The far more important question last indicated will be noticed first. Whatever may be the precise scope and effect of the High Court's ruling, there seems to be no longer any room for

* Paras 41 - 43.

for doubt that it has been judicially interpreted, though not within a limited area,# as declaring the tenure of a Zamindari not terminable at the will of the Zamindar at the end of the year and has had the effect over a more extended area, of enabling the Zamindars to inforce arbitrary terms and keep enhanced rents from the ryots. It is clear, therefore, that a Madras Act VIII of 1865 has failed to assure to ryots holding under assignees of the public revenue that permanency of tenure, as well as security against exaction and oppression, which that enactment, as likewise the Regulations of 1802 and

In Ryotwar tracts generally and in Tinnevelly see Collr's letters recorded in Board's Proceedings, dated 7th March 1879 & 11th 1879.

Sec: 12.

#XXX Sec: 12.

#III & IV. Sec: 8.

and 1822 which it consolidated, contemplated and intended to assure to them.

It is therefore, having regard to the magnitude of the interests involved, so fraught with anxiety, and the Right Honorable the Governor in Council is satisfied that remedial measures cannot be safely deferred any longer. He accordingly resolves to appoint a Commission consisting of the Gentlemen named in the margin to draft a Bill calculated to remove all doubt as to the conditions of a Ryotwar tenure & under the Court would be disposed to distinctly lay down, that the ryot would have fixities a right of permanent occupancy, subject only to the condition of paying to the Sirkar or to assignees of the

* Hon: Mr. Cunningham.
Hon: Mr. E. Sullivan.
Mr. Foster Webster.
The Govt: Pleader.

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* Hon: Mr. Cunningham.
Hon: Mr. E. Sullivan.
Mr. Foster Webster.
The Govt: Pleader.

the Sirkar share of the crop or its value as established by fixed custom, mutual agreement or decision of competent authority and evidenced by the Pottah and Muchulka and these documents have been discovered with the joint mutual agreement with liberty to dispose of such right by sale, gift or otherwise, until evicted by due course of law for failure to discharge such legally established and limited charge on the land or to enter into an agreement in the form prescribed by law with respect to such limited charge.

5. The Bill to be now framed should be a complete substitute for the present Act

Act embodying all the provisions therein contained for determining the rates of rent for enforcing the exchange of Pottahs and Muchulkas and for regulating distress and sales as well as enactment in case of dispute in the payment of rent.

6. To guard against the possibility of the distinction between a ryot per se ryot and a sub-tenant being overlooked, the Government would exclude all provisions such as is contained in section 13 of the present Act, for enforcing specific contracts with actual cultivators who are not ryots per se ryots. They doubt whether the question of sub-tenants and

the

the right that may properly be
assigned to them in one vehicle
at the present time, at any
rate, calls for State interference,
and it appears to them that
some summary procedure
for the protection of con-
tractors as served to be
necessary, it may well
be left to the ordinary
judicature.

7. A Zamindar or
Inamdar may possess
both the ryotwari property and
the assigned State property;
but such a case would not
come within the purview
of the present law, restricted,
as the proposed enactment
is intended to be, to the
relation of an assignee of

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of the public revenue and the
ryot, or occupant holding under
them. The Government consider
that as suggested by the Famine
Commissioners, the Bill should pro-
vide that all tenancies in
Zamindaris or Inam lands
prima facie carry a right of
occupancy, and should throw on the Zamindar or Inamdar the onus of
proving the facts from which
a non-occupancy tenure
has to be inferred, in like
manner, where a tenant
contracts at the time of
first occupancy, reserving
to the superior holder the
right of possession on a fixed
rent, or alleged, the onus
of proving such contract
should rest on the party
pleading

* Para 42.

pleading at
8th As regards the question
of sub-letting, the Government
fully agree in the views ex-
pressed by the Collector of
Salem and the Board of Revenue
as to the inexpediency of any
State interference. Whatever ill
consequences of such a system,
due perhaps to peculiarities
of tenure are observed in other
parts of India, none such
are apparent in this Pre-
sidency. Here, in the first
place, the under-ryot
or pro-prietor-cultivator does not
take part in the cultiva-
tion himself, he contr-
-acts invariably very small-
Secondly where they have
sub-tenants cultivating
for them they treat them

will, thirdly, their position is
quite different from that of
Zamindars and Inamdars-
the assignees of the State revenue
from land.

9th The Famine Commission
assume a state of things un-
der which the privileged tenant
has no interest in improving
the land, but such is not
the case in this Presidency,
where the Government hypo-
thecates the security
which accrues to himself
by the improvement of the
land, which is his own
property subject only to a
limited charge for State dues;
his available means are as a
rule devoted to its improvement.

& 10th In this Presidency the
ryot proprietor is in the vast
majority of cases to all intents

and

and furthermore the "bona fide cultivator" to whom the Famine Commission desire to restrict the occupancy rights. If however, by "bona fide cultivator" they mean that person only who actually holds the plough or personally labour on cultivation operations, the measure which they recommend, viz: "to prevent any one who is not a bona fide cultivator from acquiring or retaining such rights" would be subversive of property in land throughout the country, and would by depreciating the value of land, defeat the very object in view, viz: to augment the subterranean for the improvement of land. As pointed out by Mr Stokes, the compensation which the cultivating tenant would have to make to the expropriated owner would, for many years, be little to the former to maintain the improvement of land, while, at the same time, the savings of men engaged in trade and other occupations would be unprovided therewith would be lost to it. The whole scheme is, as clearly shown by Mr Stokes, impracticable, as it would very often be most difficult, if not altogether impossible, to ascertain whether the holder of the occupancy right were the "actual cultivator" or not, which error might be the prevention of ameliorations intended to be attached to the term.

I agree to this Draft L.O with the omission of the two paras about which Mr Hudleston doubts. I should like to see the letter to India after it has been put in a shape in which he will agree. As we propose to appoint a Committee to prepare a Bill I hardly think it is necessary to explain our

7/11 Ordered that the following letter be despatched to

to the Government of India.

Rajah Rampaul

No 438

Revenue Agriculture Department,

Sir,

With reference to your office letter dated 24th February 1881, No 560, I am directed to forward, for the information of the Government of India, copy of the Proceedings of this Government, in which the important question of occupancy right in Zamindari and Inam lands and of the custom of sub-letting by proprietary occupants have been fully discussed.

29 March 1881

2. It will be seen that

views to India in any great detail. I do not as at present advised myself object to the suggested letter but should like to see it altered so as to meet the objections, which are I think well-founded. The Dept will then submit for kindly countersign papers fairly written or printed in the Hindoo in which they are to go to India.

8/

the Right Honorable the Governor in Council, having regard to the magnitude of the interests involved, has come to the conclusion, that the existing Rent Act should be amended so as to place beyond all question the right of occupancy which the general body of proprietary cultivators known by the name of ryots have held in this country unquestioned, from time immemorial, and has appointed a Committee for that purpose.

3. On the question of sub-letting, for reasons fully explained in the Proceedings referred to, the Government see no reason or justification for State interference between the ryot proprietor and his sub-tenant

Sub-tenant, where the former
is not himself the actual
cultivator.

This is a clean copy,
made for the convenience
of His Excellency, of the
draft accompanying —
stitched with separate file
of papers.

CMCC
18.3.82

C. 18-3-82 R 23. 3. 82

MINUTE BY THE HONORABLE W. HUDLESTON.

From Government of India, Home, Revenue, and Agricultural Department, dated 24th February 1881.
Extracts from Famine Commissioners' report, *re* Tenant right.

The very important and interesting questions raised in these extracts have long occupied my attention and that of my Honorable colleague Mr. Carmichael, who has a mass of papers connected with it, which I handed to him when he accompanied His Grace the late Governor on his tour to the Northern Cirkars, and the need or otherwise for legislation is being considered by us.

I am of opinion that in this Presidency, all ryots, whether in Government or Zemindari lands, have occupancy rights which assure them permanence of tenure on the conditions of holding, unless these should have been expressly modified by mutual agreement at the time of first occupying fresh land.

The provisions of the Regulations of 1802 were intended to be maintained by the Rent Recovery Act of 1865, and in the Board's Proceedings which I drew up when the last Act was in Committee of Legislative Council, I endeavored to record fully what were the rights and reservations contemplated by the law.

I have none of the papers at hand to refer to, but I have never been convinced that the subsequent decisions or rulings of the High Court have altered the footing of ryots, which I conceive to be that they are entitled to retain their lands and deal with them by gift, sale, mortgage, or otherwise, so long as they or their representatives continue to pay the amount duly settled on them as the Sirkar share, whether retained by Government or made over to a Zemindar, the principles on which this is to be calculated being established from time immemorial and constituting a property-charter which is superior to any so-called "landlord's right" whether of the State or the Zemindar.

This position in no way bars the possibility of a Zemindar possessing or acquiring the proprietary right in certain land—just in the same way as the State possesses it in all waste or unreclaimed land—but merely asserts that the Ryotwari tenure, pure and simple, includes occupancy right, equivalent to full proprietary right subject to the one condition of paying the Sirkar dues.

That by special contract land may be occupied for cultivation on more restricted conditions of tenure, I do not dispute; but in the absence of such special contract, the conditions that I have named arise and continue in my opinion.

It is in no way that I can see opposed to this view that ryots may have sub-tenants, and I believe it will be found that, if fairly analysed, the decision of Sir C. Scotland and Mr. Justice Holloway—on which so much stress has been laid—does not affirm anything more than the right of the possessor of the "*Ryot* property" in any land to let it out for cultivation on any terms that he may choose.

If I rightly remember, the land concerned in that suit was Pagoda Inam, which had been managed by the Collector, who admitted a tenant for a term of years, on the expiration of which the Pagoda Dhurmakartas, who had been subsequently placed in control of the lands, required an advance of rent on renewal their right to which the Court upheld. The proprietary right in the land was in the case in question, I think, shown to belong to the Temple, who, in fact, possessed what I have termed the "Ryot property" in it, and were as free to settle the conditions of cultivation with a sub-tenant as any ryot would be.

In Canara, for instance, the Mulgars have this proprietary right, and they have as sub-tenants "Mulgeni wukuls" or tenants on permanent lease, and "Chalgeni wukuls" who are yearly tenants.

In Malabar, the Jenmis occupy the same position, but I believe sub-holdings on *permanent* lease are there comparatively rare, though, whether the twelve years' limitation with conditions of renewal is more than a comparatively recent creation of the Courts, Mr. Wigram's late letter puts in question.

In Tanjore, the Mirasidars are recognised as having the same right.

The same is the case in Tinnevelly and in Chingleput.

In the Northern Cirkars, the "Kadim Ryots" are admitted to have the same position.

And I believe that, where we do not find it evidenced by unbroken tradition and existing practice, the cause can be unmistakably traced to the period of oppression and general disturbance by hostile incursions which preceded our rule.

Where or when settled rule was established and equity prevailed, there and then the right immediately revived, if it had been temporarily in abeyance.

The right of the State in the land is I consider strictly limited by express conditions.

And it goes without saying that the State could not *confer* rights on others, be they Zemindârs or Inâmdârs, which it did not itself possess.

I hold it to be unmistakably proved that the State cannot arbitrarily evict a ryot who is willing and able to discharge the State dues.

What those dues are is established by ancient law, and I am personally inclined to the opinion that they constitute the maximum which cannot be exceeded even by special contract, but I am scarcely prepared to say that the State right would not extend to the forbidding of extension of cultivation if terms in excess of this limit were not agreed to by an applicant for land. The case is, however, so extreme, would be so utterly improbable and impolitic on the part of the State, and so suicidal on that of the Zemindâr or Inâmdâr, that it needs little discussion.

My view then is, that ryots are, to say the least, joint proprietors in the soil with the State, or those to whom State rights have been assigned, and if this be admitted—and I am confident it can be established—then I think the ryots are in the position which the Famine Commissioners desire to secure to them, and in which it rests mainly with the Courts (Revenue or ordinary) to uphold them. I admit that this does not cover the whole question. A Zemindar, for instance, may possess both the Ryot property and the assigned State property, and the question of his relation to his tenantry may assume a far more momentous position than that of a ryot to his sub-tenant; but such exceptional cases are comparatively rare, and in this Presidency at least attain, I conceive, very small proportions, comparatively speaking.

To recognise, affirm, assert, and uphold the true relations of the ryot and the Sirkar or its assignee as joint proprietors in the soil with mutually defined rights, would, I conceive, at once take the moot question out of the political phase.

There would still, however, remain the question of sub-tenants and the rights that may properly be assigned to them, and, highly important though it be, it admits, I conceive, of being dealt with, with far more regard to general considerations than does the former, but I am by no means sure that it is one which at the present time at any rate calls for State interference.

The immediate necessity is, in my opinion, to place the ryot on an impugnable footing as a landlord—*joint* if you will—but still unquestionably possessing rights utterly incompatible with the position of a tenant whether on lease or at will.

I am not aware of any decisions of Court which are clearly counter to this view.
I remember that there was one by Mr. Collett in Ganjam or Vizagapatam which I thought opposed to it, but I have not got it at hand to ~~report~~, and at any rate it was *prior* to the Rent Recovery Act.
There have, I believe, been incidental expressions by the High Court and the Law Officers, such as that the putta is a lease, which are, I think, mischievous and based on wrong premises, but I consider these of little importance if our Courts (Revenue or ordinary) will study the question and acquaint themselves with first principles and the history of the development. The "putta" is nothing but an extract from a village register of holdings and State dues on them. As the P. C. I think said, it is not a muniment of title but only evidence of ~~possession~~.
The putta and Kabuliat have been sometimes termed lease and counterpart, but these are misnomers if intended to reduce the ryot to the position of a tenant under a landlord.
Nearer resemblance might be admitted to copyhold. But even then it would be erroneous to conceive that right is derived from the putta or is to be based on it.
It existed centuries ago when puttas were not, and would continue to exist if all the puttas in the country were converted into pulp.
I have known all the ryots of a taluk in Canara toss their "puttas" away and walk off from Jamabandy, saying they did not want them at all, because a Ceded District Head Sheristadar tried to insert some "Mogulai" limitation in them which was novel.

Any questions that may arise between the possessors of this Ryot-proprietary right and their sub-tenants had, I am inclined to think, better be left to the Courts, which can exercise an equitable jurisdiction, I imagine, even in questions of contract whether express or implied.

It would, in my opinion, be very questionable policy to interfere with the liberty of contract which a landlord possesses in the eye of the law.

When question is raised of the possibility of property in the soil as a matter of abstract right, we pass out of the range of practical politics.

17th March 1881. (Signed) W. HUDLESTON.

MINUTE BY THE HONORABLE D. F. CARMICHAEL.

I do not see what is to be gained—but further delay—by asking the Board and the other officials to report.

I gave the papers which the Famine Commissioners summarize regarding our Rent Law, to Mr. Cunningham; and I am thankful he has given the subject a friendly ~~elvee~~.

Mr. Hudleston appears to fear no evil from that High Court Judgment. He will find it there laid down that our Law gives no fixity of tenure; that whether a tenant at the end of the fusly shall be offered a fresh puttah or not by his Zamindâr is a question for the Civil Courts—and *what have these tribunals to guide them!!*

Precisely the same state of things came to pass in Bengal—when it was enacted, a quarter of a century ago—as a short and convenient mode of settling an interminable question—that a man who had been on the land (including his father's time) for 12 *years* had *fixity of tenure*; the question of *at what rent* is a separate one—our law is very good in this respect, clear and fair—but of course quite useless from its omission to say that Ryots have a right of occupancy.

When I left Madras, I was in correspondence with the Chief Justice on the subject; he, at least, quite sees how hard the High Court Judgment hits the Ryots of a Zamindâr; and promised me every help in bringing forward an Amendment of the Law.

II. As to occupancy Ryots, *i.e.*, OUR own Ryots and THEIR tenants; Sir Thomas Munro said they are the Crown's tenants *in capite*; very different from *assignees* of the revenue, such as Zamindârs, Inâmdârs, Jagirdârs—and there should be no interference between them and their sub-tenants.

(Signed) D. F. CARMICHAEL.

JEYPORE,
3rd April 1881.

MINUTE BY THE HONORABLE D. F. CARMICHAEL.

As I have said already—I consider our *Puttadar* the Crown tenant *in capite*; and I would have no interference between him and his Cultivator. In the first place, there are very few of them who do not cultivate the land, themselves; 2ndly when they have people cultivating for them, they treat them well: 3rdly their position is quite different from that of Zamindârs and Inamdârs—the assignees of the public revenue from land.

II. As to the Zamindar's tenants, I have written *buckets* on their miserable position, both at the time Act VIII of 1865 was before the Legislative Council, and afterwards in 1871, when I was in the Board of Revenue.

The Act, it was supposed, secured to the tenantry (1) fair rents and (2) fixity of tenure.

In 1871, however, a judgment of the High Court declared that no fixity of tenure was secured to them.

I showed that it was at least the intention of the Legislature to secure it; and that the omission to do so should be immediately supplied. For five years, Mr. Sim kept that draft of mine in his box: when he left the Council, he politely handed it back. It was then sent out for the observations of the Collectors.

Meanwhile I have recently had an opportunity, in my tour in the North, of making my own observations. I find that in every Zamindari, even in Vizianagaram, where, if anywhere, there is a liberal and enlightened administration—every yearly patta now runs "at the end of this term I have no further claim to occupy this land." It is not that ryots are turned out neck and crop, frequently: but they are screwed up or liable to be screwed up to any rent—in the fear of being turned, if they stand up for the rates which are declared the proper ones in that unfortunate Act, which omitted to secure—fixity of tenure.

We must have fresh legislation and the sooner the better.

(Signed) D. F. CARMICHAEL.

14th October 1881.

MINUTE BY THE HONORABLE W. HUDLESTON.

I think we are all fairly agreed on this subject. The evils of sub-letting denounced by the Commissioners do not exist in this Presidency to any extent calling for the proposed remedy. The case of sub-tenants is not such as to need the protection proposed. The uncertain tenure of "occupancy tenants" is a recent creation by our Courts by an interpretation of a Rent Recovery Law which was intended to affirm the "proprietary rights of ryots," and the point should be cleared of all doubt by local legislation.

The Zemindar is merely as such the assignee of State rights. The State could not confer on others what it did not possess itself, and it never possessed the right to demand more than the State share of the produce of the land, or to oust the "occupying ryot" who satisfied this limited demand. The law should be amended to establish beyond question this ancient and, till late years, unquestioned position.

The requirement from Zemindars' Kurnams of the statistical information required for State or public purposes should be enforceable by law, and a measure to this effect has long been contemplated here but is complicated by other proposals regarding village service.

I hope to take it up shortly.

(Signed) W. HUDLESTON.

19th October 1881.

Seen in Council 1/4/82

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—again G.O., dated 13th March 1876, No. 366.

READ—also:—

Board's Proceedings, dated 7th March 1879, No. 618.
G.O., dated 18th March 1881, No. 475.
From Mr. P. Chentsal Rao, dated 27th April 1881.
From the Board of Revenue, dated 26th September 1881, No. 2122.
Minute by the Honorable W. Hudleston.
Minute by the Honorable D. F. Carmichael.

ORDER—dated 29th March 1882, No. 427, Revenue.

Land Revenue, No. 24

In the first of the papers read above, the Government called upon the Board of Revenue to enquire and report whether the results anticipated by them, as affecting the fixity of tenure of the Zamindári ryots, from the judgment of the High Court in Special Appeal No. 9 of 1870,* had ensued and to what extent, and the second paper is their reply. The third embodies a letter from the Government of India asking for the opinion of this Government on certain suggestions made by the late Famine Commission for improving the position of tenants in this Presidency. The next following two papers are the only replies yet received to the order of this Government inviting remarks on the suggestions last referred to.

* Volume VI, Madras High Court Reports, pages 164—174.

2. The Famine Commission, in the extracts from their report printed in the G.O. of 18th March 1881, refer particularly to the custom of sub-letting by holders of occupancy rights, which they consider to be attended with ill-consequences, and suggest that it should be discouraged, or even, if possible, forbidden.† They also, adverting to the High Court's judgment above referred to, point out the expediency of legislation in view to the protection of the occupancy rights of the Zamindári ryot.‡

† Paras. 31 and 32.

‡ Paras. 41—43.

3. The far more momentous question last indicated will be noticed first. Whatever may be the precise scope and effect of the High Court's ruling, there seems to be no longer any room for doubt that it has been judicially interpreted, though yet within a limited area §, as declaring the tenure of a Zamindári ryot terminable at the will of the Zamindár at the end of the year, and has had the effect, over a more extended area, of enabling the Zamindárs to impose arbitrary terms and levy enhanced rents from the ryots. It is clear, therefore, that Madras Act VIII of 1865 has failed to assure to ryots holding under assignees of the public revenue that permanency of tenure, as

§ In Vizagapatam generally and in one case in Nellore—*vide* Collector's letters recorded in Board's Proceedings, dated 7th March 1879, No. 618

Section 12.

well as security against exaction and oppression, which that enactment, as likewise the Regulations of 1802,* and 1822† which it consolidated, contemplated and intended to assure to them.

* XXX Section 12.

† IV and V, Section 8.

4. The position, having regard to the magnitude of the interests involved, is fraught with anxiety, and the Right Honorable the Governor in Council is satisfied, that remedial measures cannot be safely deferred any longer. He accordingly resolves to appoint a Committee composed of the gentlemen named in the margin to draft a Bill calculated to remove all doubt as to the conditions of a Ryot's tenure of land. The Government would be disposed to distinctly lay down, that the ryot and his heirs or assigns possess a right of continuous occupancy, subject only to the condition of payment to the Sirkar or its assignee of the "*Sirkar*" *share* of the crop or its value as established by proved custom, mutual agreement or decision of competent authority, and evidenced by the Puttah and Muchilka, unless these documents have been dispensed with by proved mutual agreement—with liberty to dispose of such right by sale, gift or otherwise, until evicted by due course of law for failure to discharge such legally established and limited charge on the land or to enter into an agreement in the form prescribed by law with respect to such limited charge.

Honorable Mr. Carmichael.
Honorable Mr. Sullivan.
Mr. Forster Webster.
Mr. H. E. Stokes.
The Government Pleader.

5. The Government consider that, as suggested‡ by the Famine Commission, the Bill should provide that all tenancies in Zamindári or Inam lands *primâ facie* carry a right of proprietary occupancy, and should throw on the Zamindár or Inámdár the *onus* of proving the fact from which a non-occupancy tenure has to be inferred. In like manner, where a special contract at the time of *first* occupancy, reserving to the superior holder the right of eviction or a higher rent, is alleged, the *onus* of proving such contract should rest on the party pleading it.

‡ Paragraph 42.

6. As regards the question of sub-letting, the Government fully agree in the views expressed by the Collector of Salem and the Board of Revenue as to the inexpediency of any State interference. Whatever ill-consequences of such a system, due perhaps to peculiarities of tenure, are observed in other parts of India, none such are apparent in this Presidency. Here, in the first place, the number of ryot proprietors who do not take part in the cultivation themselves, is comparatively very small; secondly where they have sub-tenants cultivating for them, they treat them well; thirdly their position is quite different from that of Zamindárs and Inámdárs—the assignees of the State revenue from land.

7. The Famine Commission assume a state of things under which "the privileged tenant" has no interest in improving the land; but such is not the case in this Presidency, where the Government ryot fully appreciates the benefits which accrue to himself by the improvement of the land, which is his own property subject only to a limited charge for State dues; his available means are as a rule devoted to its improvement.

8. In this Presidency, the ryot proprietor is, in the vast majority of cases, to all intents and purposes the "*bonâ fide cultivator*," to whom the Famine Commission desire to restrict the occupancy right. If, however, by "bonâ fide cultivator" they mean that person only who actually holds the plough or personally labours on cultivation operations, the measure which they recommend, viz., "*to prevent any one who is not a bonâ fide cultivator from acquiring or retaining such rights*" would be subversive of property in land throughout the country, and would, by depreciating the value of land, defeat the very object in view, viz., to augment the wherewithal for the improvement of land. As pointed out by Mr. Stokes, the compensation which the cultivating tenant would have to make to the expropriated owner would, for many years, leave little to the former to invest in the improvement of land; while at the

same time, the savings of men engaged in trade and other occupations now invested therein would be lost to it. The whole scheme is, as clearly shown by Mr. Stokes, impracticable, as it would very often be most difficult, if not altogether impossible, to ascertain whether the holder of the occupancy right were the "actual cultivator" or not, whatever might be the precise signification intended to be attached to the term.

9. Ordered that the following letter be despatched to the Government of India :—

(Here enter, No. , dated March 1882.)

(True Extract.)

(Signed) ~~C. G. MASTER,~~
Secretary to Government.

Letter—To the Secretary to the Government of India, Revenue and Agricultural Department, dated 29th March 1882, No. 437.

Land Revenue, No. 25.

* Dated 29 ~~March~~ 1882, No. 437.

SIR,

With reference to your office letter, dated 24th February 1881, No. 160, I am directed to forward, for the information of the Government of India, copy of the Proceedings* of this Government, in which the suggestions of the Famine Commission on the important questions of occupancy right in Zamindâri and Inâm lands and of the custom of subletting by proprietary occupants have been fully considered.

I have the honor to be,
Sir,
Your most obedient servant,
(Signed) ~~C. G. MASTER,~~
Secretary to Government.

~~FORT ST. GEORGE,~~
~~March~~ 1882.

Exd. W. H. French.
Copies.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—again G.O., dated 13th March 1876, No. 366.

Read—also the following Proceedings of the Board of Revenue, dated 7th March 1879, No. 618:—

Read—the following file of replies to Board's Proceedings, dated 28th March 1876, No. 851:—

Letter from the Collector	of Ganjam,	dated	11th June 1877,	No.	1956.
,, ,,	of Vizagapatam,	,,	28th Oct. 1876,	,,	1524.
,, ,,	of Godávari,	,,	2nd June ,,	,,	151.
,, ,,	of Kistna,	,,	14th Sept. 1877,	,,	1993.
,, ,,	of Nellore,	,,	16th Nov. 1876,	,,	3214.
,, ,,	of Cuddapah,	,,	19th Sept. ,,	,,	238.
,, ,,	of Bellary,	,,	27th Aug. 1877,	,,	681.
,, ,,	of Kurnool,	,,	7th July 1876,	,,	304.
,, ,,	of Madras,	,,	28th ,, ,,	,,	252.
,, ,,	of Chingleput,	,,	20th June ,,	,,	374.
,, ,,	of North Arcot,	,,	17th Aug. ,,	,,	387.
,, ,,	of South Arcot,	,,	26th July ,,	,,	327.
,, ,,	of Tanjore,	,,	24th Jan. 1877	,,	287.
,, ,,	of Trichinopoly,	,,	15th June 1876,	,,	161.
,, ,,	of Madura,	,,	12th Aug. ,,	,,	300.
,, ,,	of Tinnevelly,	,,	8th July ,,	,,	431.
,, ,,	of Coimbatore,	,,	10th June ,,	,,	117.
,, ,,	Commr. of the Nilgiris,	,,	9th ,, ,,	,,	32.
,, ,,	recorded in Board's Proceedings, dated 7th March 1879, Mis. No. 2224.				
	Collector of Salem,	dated	15th Nov. 1876,	No.	301.
,, ,,	of South Canara,	,,	15th ,, ,,	,,	2127.
,, ,,	of Malabar,	,,	25th Aug. ,,	,,	226.

Resolution—dated 7th March 1879, No. 618.

In their Proceedings, dated 8th September 1871, No. 3876, the Board called attention to the judgment of the High Court in Special Appeal No. 9 of 1870, and urged upon Government the necessity of obtaining an enactment affirming in unmistakable terms the right of occupancy possessed by Zemindari ryots, and in G.O., dated 13th March 1876, No. 366, the Government called on the Board to enquire and report whether the results anticipated by the Board had ensued and to what extent. The replies received from District Officers on the subject will now be forwarded for the information of Government. Many of them comprise discussions at considerable length as to what the respective rights of Zemindars and their ryots really are, but as the object of the Government in making this reference was merely to ascertain facts with regard to the operation of the judgment in question, these discussions will be but briefly noticed in the remarks which will be made below.

2. The Collectors of *all* Districts except Ganjam, Vizagapatam, and Nellore report that the ruling in question has had no effect in their Districts. Most of these Collectors and officers consulted by them incline to the opinion that this is mainly owing to the decision of the High Court in the case in question not being widely known, but as a matter of fact nothing has as yet resulted from it to the detriment of the ryots.

3. Mr. Grahame when Acting Principal Assistant in charge of Ganjam is unable to cite any instance of an ejectment which can be attributed to the judgment of the High Court in the case referred to, but alludes to general complaints of extortionate practices brought against the Zemindars of Chíkati and Kallikót in 1875 as showing that the decision has had the effect of emboldening landholders successfully to enforce arbitrary terms upon their tenants, and of paralyzing the efforts of the tenants successfully to resist the demands of the landholders. In the case of the Chíkati Zemindar, however, there seems to have been a thorough reconciliation between the Zemindar and the ryots after the death of the Diwan, and Mr. Davidson, who was Collector of Ganjam when the complaints against the Kallikót Zemindar were preferred, regarded the ryots' claims as unreasonable and out of the question.

4. From Vizagapatam there is a general *consensus* of opinion that no ryot can now successfully contest a suit of ejectment. Some hold that the decision in question changed the law, others that it merely gave legal sanction to the previously existing practice, but amongst the many Revenue and Judicial Officials, Zemindars and Diwans consulted by the Collector there is not one who expresses an opinion that the effect of the decision has been other than disadvantageous to the position of the ryot. The Acting Senior Assistant Collector writes: "Since the ruling has rendered it clear that tenants have no occupancy rights, the Civil Courts are extensively resorted to, and the present practice is to pass a decree of ejectment on proof that the term of the putta has expired," and this statement of the existing state of affairs seems to be fully borne out by the other testimony adduced.

5. From Nellore the Collector reports that he does not learn that the tenure of lands generally has been rendered precarious by the ruling; but two cases* are cited in which it is stated that a decree in favour of the Zemindar of Kálahasti was specifically based on the High Court's decision in question. Copies of the District Court's judgments in both cases are forwarded. In only one of these, viz., Regular Appeal No. 29 of 1873, do the Board find any allusion to the decision; but the case is an important one, as it appears that under the High Court's ruling the District Judge, though expressing much regret, considered himself to be bound to decide against a tenant of seventy-three years' standing on the ground that his lease was clearly from year to year, determinable at the close of any particular fasli.

* Regular Appeal No. 21 of 1873.
" " " 29 " "

6. It will thus be seen that it is only from three districts that the decision of the High Court in question is reported to have led as yet to the results anticipated by the Board. As regards Ganjam the connection between the cases cited and the High Court's decision is not very clear; in Nellore, though the ruling has as yet had no general effect, it has received judicial notice in very decided terms; and in Vizagapatam it seems to be generally conceded that the decision has in effect dealt a death-blow to the hopes of the party who contended that the Zemindari ryot was not a mere tenant-at-will.

7. The Collector of Cuddapah remarks that, as there was a special contract in the case in question, he doubts whether the ruling goes so far as to lay down that every tenant can be ousted at the caprice of his landlord, and the same view is advocated at great length by the Diwan of Venkatagiri. There is no doubt much truth in this view, but it seems to be clearly established that wherever the judgment has been relied on by landlords it has had the practical effect of rendering the tenant's position much less secure. Perhaps this might be counteracted by getting a well-selected case brought under the judicial cognizance of the High Court, as suggested in paragraph 31 of the Diwan's letter, and Collectors might be instructed accordingly; but local customs differ greatly and a really representative case may not be easy

to find. The Board incline to think that the whole question of the relations of Zemindars as landlords stands at present on a very unsatisfactory footing, and that the sooner the difficulty is faced and dealt with in a thorough and efficient manner the better for all parties concerned.

8. The questions of their relations to their tenants, of their liabilities in times of pressure and famine, of their responsibilities as regards keeping up public works† on which the well-being and indeed the lives of numbers depend, of the status of village officers in Zemindaris, of the maintenance of village accounts and collection of statistics, each and all of these questions seriously demand attention, and the Board do not see that it can be efficiently given unless an officer or a commission is specially deputed for the enquiry. In their opinion the subject is large enough and important enough to render such a course most desirable.

† G.O., Public Works Department, dated, 16th September 1878, No. 722-I.

(A true Extract.)

(Signed) J. STURROCK,
Acting Secretary.

To the Secretary to Government, Revenue Department, with a file of replies, and copy of Board's Procs., 7th March 1879, Mis. No 2224.
" all Collectors.

Read—also the following G.O., dated 18th March 1881, No. 475, Revenue.

Read—again the following letter from C. L. TUPPER, Esq., Officiating Under Secretary to the Government of India, Home, Revenue and Agricultural Department (Revenue), to the Secretary to the Government of Madras, dated Fort William, 24th February 1881, No. 160:—

I am directed to forward an extract* from the Report of the Indian Famine Commission, Part II, Chapter III, Section 1, on the subject of the position of the tenants in the Madras Presidency, and to request that the Government of India may be favored with the opinion of His Excellency the Governor in Council on the points raised.

* Paras. 31-32 and 40 to 44.

Enclosures.

Extracts from Report of the Indian Famine Commission (Part II) Chapter III, Section 1.

Para 31. But the question of subletting seems to us to be one of even greater importance. The more valuable the occupancy right becomes by reason of such measures of protection as we have advocated, the more need there will then be of guarding against a custom which is everywhere prevalent in India, under which the privileged tenant is apt to turn into a middleman, subletting the land and living on the difference between the rack-rent and the privileged rate secured to him by the law. The occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator; and the object of the law should be to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights. If this can be secured, the chief danger in the way of making such rights marketable will be removed, for they will not be able to pass into the hands of money-lenders, and if a tenant who becomes deeply involved is sold up, his land will pass to another tenant, presumably a more thrifty man, and the public interests will not suffer by such a substitution. We therefore recommend that concurrently with the extension of the right of transfer the practice of subletting by an occupancy tenant should be discouraged, or even, if possible, forbidden. Care must no doubt be taken lest such a measure should work harshly. But if a tenant, for a long period, fails to keep up the stock required for cultivating his land, or otherwise ceases to be by occupation and habit a *bonâ fide* cultivator, the rights he or his ancestors acquired by cultivating the soil might reasonably pass from him to the person who, having become the actual cultivator, occupies his place. We conceive that it would not be difficult for the Rent Courts to investigate and

decide the question of fact, whether a tenant with occupancy rights has or has not wilfully ceased to be a habitual cultivator in respect of the whole or any part of his holding; and when such lapse is established the occupancy right might be held to have passed to the person to whom the actual cultivation of the land has been transferred.

32. The tenants-at-will form a large and an increasing class, the growth of which in some parts of India cannot be looked on without serious apprehension. They are kept in a situation of absolute dependence on the landlord, which takes away the desire to improve the land or to raise their own position, or to lay by anything from the profits of agriculture. The soil, therefore, is not unlikely under such tenants to become year by year less productive, and the tenant, having neither credit nor stores to fall back upon, becomes a prey to the first approach of famine. It is much to be desired that for tenants of this class some means should be provided by which they might, without injury to the landlords, secure occupancy right in the lands they hold. It seems not impossible that a plan might be adopted under which, with all reasonable attention to the interests of the landlord and with suitable limitations as to the character of the holdings to which the plan would apply, an estimate should be made, either in the form of a rate per acre occupied or of a percentage on the rent paid, which shall represent the annual amount which a landlord gains by his tenant not possessing occupancy rights, and that on the tenant-at-will making good, by instalments during a certain number of years, a sum equal to the capitalized value of that amount, in addition to his present rental, he should thereby obtain the privilege and the advantages of security of tenure which attach to an occupancy tenant. No useful end would be obtained by our entering further into the details of such a scheme as this, but we think that the subject is of such importance as to call for the consideration of the Government. It would, we conceive, operate in the direction of restoring to the cultivating class the protection which they had under the ancient custom of the country against extreme pressure by rack-renting, but which they have, in a great measure, lost under our rule; and we hope that it, or some similar plan, may be found suitable for adoption, in order that those among the tenants-at-will who are the best cultivators, and the most thrifty persons, may have an opportunity of raising themselves from their present precarious situation to the more secure position of an occupancy-tenant.

Extracts from Report of the Indian Famine Commission, Part II, Chapter III, Section 1.

Para. 40. In consequence of the tendency on the part of those who are recorded as ryots to sublet their lands or part of them, and to live on the difference between the rents they receive and the revenue they pay to Government, a considerable class of subordinate tenants is growing up who have no permanent interest in the land, and who pay such high rents that they must always be in a state of poverty. These subordinates are not recorded or recognized in the Government registers, but the existence of such a class involves the same evils as we have dwelt on in the case of the tenants-at-will in Upper India. We think that the question should be submitted to the consideration of the Local Government, whether it is contemplated that, under the Land Revenue Settlement, Government ryots should be permitted to sublet their lands, and if so, whether measures should not be taken for recognizing the status of such sub-tenants and recording the area they hold, the rents they pay, and the conditions of their tenure.

41. In the Madras Presidency several amendments of the law regulating the relation of the great Zemindars to the class of cultivators who hold under them and who are in number about a million are desirable. For many years these tenants appear to have enjoyed rights closely corresponding to those of the Government ryot, and Regulation IV of 1822, which governed the subject, virtually recognized the existence of these rights, and provided various safeguards for their preservation. In like manner the Rent Act VIII of 1865 implies, without affirming, the existence of these rights and lays down several rules for their better enforcement. So far as we have been able to learn, the existence of these rights was never seriously questioned till a judgment of the High Court passed in 1871 was understood as laying down the proposition that a Zemindari tenant is *primâ facie* a tenant-at-will, and that in the absence of proof of a custom to the contrary, the landlord's right to enhance or eject must be presumed.

42. This view of the law (which it is possible that it may not have been the intention of the Court to affirm) is deprecated by other high Judicial authority, by the Board of Revenue and by numerous Collectors who have been consulted on the subject. The general result of the evidence received by the Commission is that the effect of the inadequate wording of the Rent Act of 1865, coupled with the ruling of the High Court, has been to alter the legal position of Zemindari tenants and to render it precarious, exposing them to many forms of oppression, and excluding them from all the benefits which it was the object of the Regulation which gave a legal status to the Zemindari system, and of the Rent Act to secure for every class of tenant; and that the ill-consequences of this defect in the law are likely to become more apparent as the new view becomes better known. We entirely concur in the opinion expressed by Mr. Justice Innes and the Board of Revenue, that legislation is necessary, and that its postponement cannot fail to prove detrimental to the status of this large class of cultivators. The right course

would, we think, be to provide that all tenancies should, *primâ facie*, carry a right of occupancy, and to throw on the landlord the onus of proving the facts from which a non-occupancy tenure has to be inferred: such facts would be the commencement of the tenancy by a contract reserving to the landlord the right of eviction, or a clearly proved custom of eviction.

43. The same observations apply equally to the occupants of land in villages owned by namdars or other persons to whom Government has transferred all or part of its right to the land revenue. In these cases, as well as in the Zemindaris, it is essential that the villages should be surveyed, village accountants kept, and all village papers and statistical returns duly furnished which are needed for the information of the Government, and the record of the rights of the parties concerned; and we recommend that measures should be taken to carry out this suggestion.

44. The remarks we have made in the case of the Bombay Presidency as to the position of the subordinate tenants under the registered ryots apply with equal force to the Madras Presidency.

Order—dated 18th March 1881, No. 475, Revenue.

Miscellaneous.

The extracts received with the foregoing letter will be circulated to the Board of Revenue and the gentlemen named below, with the request that they will favor Government with an expression of their views on the important questions therein discussed.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue.
" Hon. Justice Muthusami Aiyar, C.I.E.
" " A. Seshayya Shastri, C.I.E.
" " V. Ramayyangar, C.S.I.
" M. R. Ry. P. Chentsal Row Pantulu Garu.
" " P. Srinivasa Row Garu.
" " G. Muthusami Chetti Garu.

Read—also the following letter from P. CHENTSAL RAO, Head Sheristadar, Board of Revenue, to the Secretary to Government, Revenue Department, dated Mylapur, 27th April 1881:—

I have the honor to acknowledge receipt of the G.O., dated 18th March 1881, No. 475.

2. The points on which I am asked to give my opinion are, I believe, the following:—

1*st*.—Whether it is desirable to discourage or even forbid the practice of a tenant with occupancy rights subletting his land, and if they are permitted to sublet their lands, whether measures should not be taken for recognizing the status of such sub-tenants, and recording the area they hold, the rents they pay, and the conditions of their tenure.

2*ndly*.—Whether it is possible and desirable to improve the position of the tenants-at-will, by providing them with some means by which they might without injury to the landlords secure occupancy right in the lands they hold, and if so, what is the best means to be adopted for attaining the object in view.

3*rdly*.—Whether fresh legislation is not necessary to set the rights of tenants of Zemindars and Inamdars on a firmer footing than they now are, by providing that all tenancies should, *primâ facie*, carry a right of occupancy, the onus of the non-occupancy tenure being left to the landlord.

4*thly*.—Is it not essential that all Inam and Zemindari villages should be surveyed, village accounts kept, and statistical returns needed for Government, furnished, and if so, what measures should be adopted?

3. *First*—I do not think that it is desirable to prevent or even discourage subletting. To stop subletting would be stopping progress. Men desire not only wealth, but also ease, pleasure, social position and power, and they wish to get wealth with the least possible trouble, exertion and sacrifice, so that, when a tenant who has occupancy rights acquires sufficient wealth, the first thing he desires to secure is ease and pleasure. He would be glad to have £100 a year without toil by subletting his land to another rather than £200 by working on the land himself, provided the £100 are sufficient to maintain him decently. Is it proper to curb this natural desire? Is it just? And is it advantageous to society? I should say it is palpably unjust to prevent a man from doing what he likes with his property, and no amount of reasoning in the world will ever convince people who are told to relinquish a source of income guaranteed by custom that the deprivation of their rights is just; but I would go so far as to say that if the measure be really advantageous to the society at large, it may be introduced, since husbandry is a public benefit and contributes to the increase and plenty of provisions, but I do not think that such a measure would be in any way advantageous to society. Before I show that it would not be advantageous, I think it necessary that I should briefly state the several conditions on which lands are usually sublet in this Presidency. Lands are sublet (1) for a fixed share in the produce, all the expenses of cultivation being borne by the under-tenant; (2) for a fixed quantity of produce or sum of money payable to the landlord, the expenses of cultivation being borne by the under-tenant; and (3) for a fixed share in the produce, the agricultural stock being supplied by the landlord. As a rule, the under-tenant does not undertake to pay Government assessment due on the land, it being paid by the ryot having the occupancy right, and the cost of improvements is also borne by the latter. Thus the under-tenant is not responsible to Government for the assessment and is not under the necessity of raising capital to improve the land, but has every interest to cultivate the land well, as thereby he increases his own gains. It is true that if he had a more permanent interest in the land he would cultivate it better, but he may not be able to provide himself with the agricultural stock, to raise capital for improvements, and may not also be able to pay assessment to Government which often becomes payable before crops come to hand, and which in some years happens to be in excess of the income. There will always be a certain class of persons of this description who could and would cultivate lands with advantage as sub-tenants, but who could not do so as independent cultivators and I do not think it is at all desirable to discourage that class. An ordinary laborer can never all at once become a tenant with occupancy rights. The position of a tenant-at-will is the intermediate stage between a laborer in the field and a tenant with occupancy rights, and to do anything to discourage this intermediate class would be to discourage progress and social advancement. Another view of the matter is, if a tenant with occupancy rights knows that the moment he ceases to be a *bonâ fide* cultivator his occupancy rights would terminate, he would not cease to be a *bonâ fide* cultivator and thus deprive himself of his rights. Instead of having tenants with a fixed share in the produce as an inducement to cultivate the land well, he would have hired servants under such supervision as would constitute him a *bonâ fide* cultivator, and the consequence would be more indifferent cultivation and less produce to the country. Therefore, whether the question is looked at from an economical or social point of view or as a mere question of justice, it is clear that it is not desirable to deprive tenants of their power to sublet their lands at their pleasure. I may also mention here that the number of cases in which lands are sublet in this Presidency is exceedingly small, and cannot be even as much as 1 per cent. of the number of tenants with occupancy rights. There is, however, no objection to recording the area of lands held by such tenants, the rents they pay, and the conditions of the tenures.

4. With reference to the second point, nobody can deny the desirability of improving the condition of tenants-at-will. The interest of landlord is certainly not always a sufficient security to the public for the good management of land, and tenants cannot be made to trust entirely in the generosity of the landlord, and their interests made dependent on their good feeling and forbearance.

But the best way of securing the object in view is not by compelling the landowners to sell their rights to tenants as suggested by the Famine Commissioners, a measure which even if possible and just would be highly unpopular, but by securing to tenants their own property in their own improvements. I think that if the tenant has added anything to the value of the land beyond the duration of his tenancy, the landlord should be made to purchase the improvements at its full value though the terms of the tenancies might be to the contrary. A law in the above direction will lead to the much desired and fearless investment of capital in land, and can in no way injure any party. The only possible objection to this is, that it will virtually give to rich tenants the power of acquiring the occupancy right of the land, as there are lots of cases where landlords are poor and unable to pay for the improvements; but since the Courts will award a fair rental and the landlord will have the lands back when the improvements are exhausted or he is able to pay for them, no real hardship can accrue to any party while the land benefits and the people with it. The details of this measure require great consideration, but I need not enter into them here. It is sufficient to mention that such a system exists in England and it is possible to work the details in a suitable manner. I doubt the possibility of making the tenants buy the freehold tenure even if it were just to do so. Of course every tenant, whatever be the duration of his tenancy, cannot be allowed to buy the freehold, and if a limit of time is placed, the landlord will see that the limit is not attained. The result will be frequent changes of tenancy and the consequent deterioration of the land.

5. As regards the third point, *i.e.*, tenants of Zemindars and Inamdars, the necessity of legislative action is undoubtedly urgent. At present the Zemindari tenants have hardly any security of tenure. Their rents are high, they are forbidden from making improvements on their land without the permission of the Zemindars, money is wrung out of them to the last penny and they are annoyed in every possible way, and their existence has become tolerable only by their ability to cheat the Zemindars in their turn by concealment of cultivation and bribing the subordinates entrusted with the administration. I think that the defect of the existing law is not merely in that, the onus of proving the right of ownership is thrown on tenants instead of on Zemindars, but also in not defining the rights of Zemindars as such in regard to the soil. A Zemindar may, of course, claim right in the soil in the capacity of a private individual, he having purchased it, or cleared a forest or acquired by some other legal means; but the point must be set at rest whether a Zemindar can, as a Zemindar, ever claim right in the soil on the mere ground that he exercised such rights as Zemindar both before and after the permanent settlement. As the law now stands, or at least as it is now interpreted, it does not decide one way or the other, and the Courts are left to decide each case on its merits. The opinions of judges vary so often, clear proof in a matter like this is so difficult, the ryots are so poor, a law suit is so expensive, and the Zemindar so rich and powerful, that the ryots are practically unprotected, and I think that it must be clearly laid down that a Zemindar cannot, as a Zemindar, claim any right in the soil, and that his right is merely confined to the realization of the Government share of the produce whatever it may be, he being of course competent to make such arrangements as may be necessary for securing his share of the produce; in other words, he being competent to arrange for the land being brought under cultivation at an early date. But when once the land is cultivated and a tenancy established, he should have no power to eject the tenant unless he refuses to pay the proper rent or assessment due to the Zemindar. This is exactly what the Government do in regard to the lands under their own management, and I do not think that there will be any difference of opinion in regard to the propriety or advisability of such a ruling in the interests of the country. The only question is, whether such a regulation involves any breach of faith with the Zemindars. I certainly think not. The payments of the tenants were never regulated by Zemindars by competition, or a separate bargain made with each ryot, but the rents have always been settled with reference to some custom or rule, thus recognizing the occupancy rights of tenants. There may be cases in which the Zemindars did turn

out-occupants when they did not pay the sums demanded whether they were reasonable or not; but such cases are extremely rare, were never recognized by Government, and no legitimate inference can be drawn from them. Moreover the permanent settlement regulations recognize no such right in the Zemindar. On the contrary they lay down that Zemindars "shall enter into engagements with their ryots for a rent either in money or kind," that "where disputes arise respecting rates of assessment in money or divisions in kind, the rates shall be determined according to the rates prevailing in the cultivated lands in the year preceding the assessment of the permanent Jamma on such lands, or where those rates may not be ascertainable according to the rates established for lands of the same description and quality, as those respecting which disputes* may rise." The regulations do not give any power to Zemindars to eject tenants on the ground that they do not give the rates demanded of them, but, on the contrary, the case in which Zemindars can eject their tenants is specifically mentioned. It is only "where under-farmers or ryots may refuse to exchange mutual engagements in writing with proprietors or farmers of land" that "such proprietors or farmers have power to grant lands of the under-farmers or ryots so refusing to other persons." It is contended by some, and indeed the view taken by the High Court is, that the latter section is applicable to cases in which ryots possess occupancy rights, but not to all tenants; but none of the regulations draw any distinction between ryots with occupancy rights and those with no such rights. The permanent settlement regulations everywhere speak of only two classes of persons having interest in the land, *i.e.*, Zemindars and tenants; and it is enacted that tenants should not be ejected except when they refuse to pay a proper rent, and it is certainly beyond my power to comprehend how the regulations could be reasonably construed in the manner they have been. It must also be remembered that rights of occupancy are not, as a rule, rights conferred by any act of State, but come into existence and grow with the advancement of the country. Rights of soil were unknown in former times when husbandry was rude and land available in plentitude. The year's crops represented the return to which the ryot was entitled for his industry and he did not care whether he possessed occupancy right in the soil or not, since if he was dispossessed of his land in one place he could cultivate in another locality; but times are now changing. Land has become scarce and it has become necessary to import skill and capital into agriculture, and cultivation therefore requires greater protection than it did when labor and seed were the chief investments in the soil, and I think there is nothing in the permanent settlement which should prevent the legislature from giving to the tenantry that protection of their growing rights which the conditions of society require. I would therefore unhesitatingly enact that Zemindars, as Zemindars, have no right in the soil, and if they want to establish right of occupancy, they can only do so by proving that they have acquired it in their capacity of private individuals. In other words, no Zemindar should be allowed to plead in a Court of Law that he always, as a Zemindar, exercised rights of occupancy and that therefore the ryots are tenants-at-will; but he must prove that he, or the person through whom he claims, acquired the right by purchase, gift or bequest or by investment of capital. If the ryot's right in the soil is once recognized, I think it follows that the improvements of the ryots on the land ought not to be taxed. I would not, however, give retrospective effect to this rule, as the measures would be highly detrimental to the revenues of the Zemindars and consequently distasteful to them; but there is no injustice whatever in declaring that the Zemindar should not *in future* be permitted to tax ryot's improvements on the land. If a ryot digs a well in his land and thus increases his produce, the Zemindar should not be allowed to share in the increased produce, and the law must be definite on the subject. I know that in some Zemindaris ryots are actually prevented from digging wells in their lands without the permission of the Zemindar, which is not granted unless the lion's share of the profit is promised to the Zemindars. There are also several minor points

Section 14, Regulation XXV of 1802.

* Section 9, Regulation XXX of 1802.

Section 10, Regulation XXX of 1802.

with reference to the Rent Recovery Act VIII of 1865, which require consideration. For instance, it is altogether a question whether the Zemindar should have the power of ejecting a tenant at all when arrear is not paid, and whether the interest of the tenant, whatever it may be, cannot always be sold; but such minor points can be considered when the Act is revised. The main point is whether Zemindari ryots should be declared or not as possessing occupancy rights in the same way as Government ryots are. If, however, the Zemindari tenants cannot be broadly declared to possess rights of occupancy, the next best thing is to institute a special enquiry by means of a Commission, and settle once for all who have occupancy rights and who have not. A clear register showing the ryots with or without occupancy rights in Zemindaris will be of immense value to the country and conducive to the improvement of property.

Section 41, Act VIII of 1865.

6. The above remarks apply more or less to the tenants of Inamdars also, with the difference that unlike Zemindars, Inamdars often occupy the double position of Government and tenant. They represent Government, because they are entitled to the assessment payable to Government, and it is not unfrequently that they have also occupancy right either because they were actual tenants before the land was made Inam, or because the rights of tenants have been purchased or otherwise acquired by them or by those who granted the Inam. Of course, there are cases in which the Inamdar has no title whatever to the land, and the only way of improving matters in regard to the tenants of Inamdars is by holding an enquiry and registering once for all the names of the real proprietors of the land.

7. With reference to the last point on which I am to give my opinion, I do not think the question admits of a difference of opinion. Certainly Government should have the means of obtaining statistics from all parts of the country within their dominion, and the present system of keeping accounts in Zemindari villages is anything but satisfactory. There is an office of Kurnam in each Zemindari village, whose duty it is to keep accounts, but he is not paid in any uniform scale. He gets too much in some places and too little in others, and neither Government nor Zemindar has any power to interfere with the scale of the fees he gets. He is responsible to the Zemindar and to Government, but neither has power to remove or suspend him and he can only be dismissed by a Civil Court after the tedious process of a regular suit. I think that much good will not result by placing the Kurnam under the control of the Collector, as his services are chiefly due to the Zemindar; but the results will, I believe, be satisfactory if the Zemindars are made responsible for furnishing any statistics concerning their estates which Government may require, he dealing with his establishment in the best manner he likes. It is but right that each landholder should furnish to the State such information in regard to his estate as may be necessary for public benefit, and the system of Government appointing their own servants for furnishing information in regard to the estates of private individuals appears to me to be altogether faulty.

Read—the following Proceedings of the Board of Revenue, dated 26th September 1881, No. 2122:—.

Read—again the following Proceedings of the Board Revenue, dated 13th April 1881, Mis. No. 3955.

Read—the following G.O., dated 18th March 1881, No. 475, Revenue.

* * * * *

Resolution—dated 13th April 1881, Mis. No. 3955.

Messrs. Foster Webster, J. F. Price, and H. E. Stokes, and Mr. Macartney, Agent to the Rajah of Sandúr.

Communicated to the gentlemen noted in the margin, who are requested to favor the Board with their remarks upon the subject.

(True Extract.)

(Signed) E. GIBSON,
Acting Secretary.

Read—also the following letter from H. E. STOKES, Esq., Acting Collector of Salem, to the Secretary to the Board of Revenue, dated Atúr, 18th May 1881, No. 1291:—

I have the honor to reply to Board's Proceedings, No. 3955, dated 13th April 1881, calling for report on proposals of the Famine Commission for restricting sub-letting and abolishing occupancy rights held by others than actual cultivators, and for the amendment of the rent law.

2. I am of opinion that the proposals on the first subject are inexpedient and impracticable, and could only be justified by proof of widespread rack-renting of land and systematic oppression of the cultivating classes, of which however proof is, in my opinion, wanting.

3. The wet lands and the more fertile and improved dry lands are largely held on putta by persons belonging to the non-cultivating classes, who are frequently non-resident in the villages where they hold the lands. The holders are usually Brahmins and Chetties in the towns. The possession of land is sought as an investment of a secure kind, and the rate of interest expected on the principal sunk is very low. I am informed that the holders are well content with 4 or 5 annas per mensem on each hundred rupees, *i.e.*, about 3 or $3\frac{3}{4}$ per cent. per annum. The actual cultivators usually get leases running for four or five years, and when there are no leases, they work on the sharing system, the most usual agreement being "Arthakandáyam," under which the Puttadar takes half the gross produce in grain and pays the Government demand. When the latter is paid by the cultivator, the landholder's share is usually one-fourth, sometime less, seldom more. The straw always goes to the cultivator. Good tenants under either system are rarely disturbed; they are too valuable to the landlord, who frequently helps them in purchase of cattle or the like.

4. I think it is too hastily assumed that this system is new, and the result of British rule and the operations of the Courts. I believe that such arrangements have always been part of the "ancient custom" of the country, and I should like to see some proof of the assertion that thay have even extended under British rule. It is possible that too hasty generalization has been made from the known course of proceedings between money-lenders and the thriftless class of larger proprietors for the most part created at the permanent settlement.

5. To cancel all these arrangements and under-tenures by a stroke of the pen would revolutionize native society and amount to wholesale confiscation; while the existence of no evil, of which they are shown to be the cause, is proved, and it is doubtful whether the ends in view, viz., improvement of agriculture, and a more assured position to the ryot which would prevent him becoming a burden to the State in time of famine, would be attained.

6. It is not clear whether the proposal that the tenants shall compensate the landlord for the loss of his occupancy right, which the Commission make in paragraph 32 of the extract, would be applied to the cases of sub-letting by occupancy tenants above described. I suppose they would not propose that the holdings should be cancelled without compensation, nor that the State should find the money; and therefore the compensation must be paid by the cultivators under some system such as suggested in the paragraph quoted. If so, it is certain that for many years to come any surplus which the ryot could secure would be absorbed in making these payments, and the fund for the improvement of the land would thus be decreased. These petty landlords are now, partly owing to the settled and secure character of the investment and partly from sentimental preference for it, content with a low rate of interest; and if they are peremptorily ejected, their interest must in fairness be capitalized at a very much higher rate than they now obtain. Also the fact that they must receive back their capital in driblets and not in a lump sum must be allowed for. Probably the rate of interest to be taken could not be less than 15 per cent., and the cultivating ryot would find the annual payments, over whatever period they were spread, a very heavy burthen. In fact, the proposal amounts to this that the cultivators should be compelled to purchase their holdings, and to be

started on their career of improvement and amassing of capital with a load of debt about their necks. The cultivator's savings for a generation would probably go to this object and not to the improvement of his land. He would be for years impoverished, not enriched.

7. The abolition of the petty landlords under discussion would lead to diminution of agricultual capital in another way. These people are all engaged in trade or other occupations, and their savings gravitate towards agricultural investment. They would be prevented from applying funds to agricultural improvement under the new proposals. There is a further and by no means unimportant consideration, viz., that these people represent the brains of the agricultural mass, and that it is through them that improvement of lands or of native methods is most likely to be realized.

8. Even supposing the saving, represented by the landlord's right, to go direct into the ryots' pocket, the holdings are too small ever to enable them to hold such a surplus as to be able to pass through a real famine without coming on the hands of Government. The change would be too infinitesimal to make any difference in this respect.

9. As to the practicability of the scheme, I would ask what is a *bonâ fide* cultivator? There are infinite degrees of intimacy in connection with the land, from the man who himself holds the plough to the man who resides at a distance, never sees the land, and merely receives his rent charge from his sub-tenant. Where is the line to be drawn? Who is to institute the interminable inquiries which will be necessary to settle the position of every registered landholder in the first instance, and who is to maintain the constant supervision which will be required to see that each cultivator retains his status as an occupancy tenant? It is futile to hope that the cultivators themselves will do the work by coming into the Rent Courts to enforce their claims. Their position is consecrated by custom and time, and they will not take the initiative in an attempt to change it. Even if the whole body of rent chargers are expropriated and abolished, a fresh body will be formed in course of time, and legal ingenuity will be baffled in attempts to prevent it.

10. So far I have been writing with reference to sub-letting by occupancy tenants, meaning thereby registered Puttadars in Government land, and holders of puttas under Mittadars. The occupancy rights of the latter are not questioned in this district, and the ruling of the High Court that the law does not recognize any such rights is not known. The right was expressly conceded in the early Ryotwar settlements which preceded the formation of the mittas, and it is recognized as attaching to all putta tenures since created in permanently-settled estates. It is equally clearly understood that there is no such right in the Jodigai Agraharam or whole Inam villages; the ryots of Trishveka Agraharams are of course in the same position as ryots in ordinary Government villages. With reference to paragraph 40 I would observe that there is not the slightest doubt that in the settlement it was contemplated that Government ryots should deal with their lands as they pleased.

11. I fully agree as to the necessity of a revision of Act VIII of 1865, both with a view to make clear the position and rights of occupancy tenants, and to correct the confusion and uncertainty which pervade the Act and make it so difficult to work. But in the last sentence of paragraph 42, the Commission seem to think that occupancy right forbids disturbance in any event, whereas non-payment of rent is recognized as a sufficient reason for ejection.

12. I do not of course question the desirability in the abstract of giving security of position to the actual cultivators; but I am of opinion that proof is wanting of the existence in Madras districts of evils resulting from the present state of things, and of sufficient magnitude to justify the serious interference with rights of property and freedom of contract and the tutelage of the cultivating classes, which are involved in the proposals of the Commission. I believe further that the measures suggested would fail to produce the effect desired.

Read—also the following letter from E. F. WEBSTER, Esq., Officiating Secretary to Government, Revenue Department, to the Secretary to the Board of Revenue, dated Ootacamund, 11th July 1881:—

With reference to the Board's Official Memorandum, dated 5th July 1881, No. 960, I have the honor to state that owing to the pressure of my current duties, I am unable to give the subject therein referred to that careful consideration which its importance demands.

Read—also the following letter from J. MACARTNEY, Esq., Agent to the Rajah of Sandúr, to the Secretary to the Board of Revenue, dated Sandúr, 16th July 1881, No. 62:—

With reference to the Proceedings of the Board, No. 3,955, dated 13th April 1881, I have delayed my reply, not from any want of interest in the subject, nor from any deficient sense of its importance, but solely from a feeling of incompetence to discuss, with even a moderate degree of satisfaction to myself, a question of such intricacy and importance. Not having before me, *in extenso*, the report of the Famine Commission, I can only remark on such of the extracts furnished as touch upon matters with which I may have had more or less experience.

2. The evils arising from the sub-letting of land and living on the difference between the rack-rent and the privileged rate secured to the tenant by the law are such as doubtless call for redress. The practice involves a fraud on the community, which, in securing to the tenant permanent rights, the legislature could never have contemplated sanctioning. At first view I was strongly inclined to deprecate any measure which would seem to violate security of tenure, by probably allowing Government officials to step in and question the tenant's right to hold on by his ancestral land so long as he continued regularly and punctually to pay the Government demand. It seemed to me that a tenant who had fallen into dilapidated circumstances might be compelled to let out his land and to follow some other occupation for a time, but yet with the hope of being able subsequently to resume the cultivation of his paternal acres, and that a legislative measure which would effectively prevent the sub-letting of lands at more than the Government rate would meet the difficulty. But on further consideration it was obvious that the evil would only be partially met so long as the *bonâ fide* cultivator had no right of permanent occupancy, and that some limits should be assigned to such an unsatisfactory state of things. Granting that the actual cultivator, even at the rack-rent, which he pays, can manage to earn a bare livelihood, he would doubtless be relieved in a measure by a reduction in his rent, yet the insecurity of his tenure must ever operate so as to debar him from that improvement of the land which is essential to the agricultural prosperity of the country. Without, therefore, positively prohibiting a tenant from sub-letting, he might justly, I think, so far be discouraged from doing so, by the rendering illegal of any agreement between him and the actual cultivator, which imposes on the latter a rent exceeding the Government rate, and in way of penalty by making him liable to a fine of double such excess. After a limited period considerately fixed, if the Government tenant is still unable to resume the cultivation of his land, in the interests of the community at large, his right of permanent occupancy, the benefits of which he confessedly cannot avail himself of, might fairly be transferred to the *bonâ fide* cultivator. On this supposition the Government tenant would be no loser in a pecuniary point of view, as he would have degenerated to the mere position of a *medium* through which the rent of the land reaches the Government Treasury, while, by continuing to hold on, he deprives the cultivator of the legitimate fruits of his industry and enterprise, and the community of the benefits which might accrue to it from a superior style of husbandry.

3. For the improvement of the ryots' position, I am disposed to regard the diffusion of education among them as of the highest importance. The recent increased efforts of the Government in this direction, by the supervision and encouragement of primary schools, may reasonably be expected to lead to the most beneficial results. The ordinary ryot can neither read nor write and he is, of course, utterly

ignorant of figures and their value. As he is always impecunious, he his ever borrowing, and is seldom, if ever, out of debt. He is readily induced to agree to a rate of interest which, if he understood the simplest operations of arithmetic, he would see to be simply ruinous. He is wholly dependent on his Soucar for all knowledge as to how he stands, and, not being able to question anything, is easily led to sign bonds for sums involving items of heavy interest, and bearing equally burdensome interest for the future. Thus his crops often are mortgaged in advance and he continues to live and cultivate on occasional advances from his creditor, and thus all the profits of his labor are absorbed by the latter, while he himself can never attain a position of independence and comfort. Until at least he is better educated, the law might help him in his struggle with rapacious creditors, by enacting that all consolidated bonds in agricultural districts should specify the several items of which they are composed. In case of litigation, such a provision would be some check on unscrupulous money-lenders, while it would enable the Court to determine whether the accrued interest was legitimate and did not exceed the aggregate principal. It is also open to question whether the law as administered is not too expensive in its processes. It is true that the Government cannot afford to administer justice at a loss to itself, but it is equally obvious that it ought not, to any considerable extent, gain thereby. It appears to me to be worthy of consideration whether the heavier expenses of litigation in country districts might not often be avoided were Judicial Officers authorized, with the consent of the parties, to act as umpires between them. The ryot seldom questions his liability to fulfil the conditions of his bond, and an arrangement might often be come to in the first stage of litigation if the inflexibility of the law did not present a hindrance.

4. Another consideration may be mentioned, which, though it bears only directly on the position of the ryots, may be regarded as of some importance. I refer to the increasing want of sympathy between them and their immediate rulers. In former times it was the practice for Revenue Officers to be appointed to districts where they were allowed to remain for a long time, and where some of them gradually rose to the highest positions in the service. Mr. Pelly may be cited as an instance in this district. They thus acquired in the course of their service a special knowledge of the district, the people, their language, their wants, and their general condition. They naturally took a deeper interest in, and were much more accessible to, them, and came often to be regarded as their friends. The frequent and sweeping changes which are now made in the administrative staff of districts have strongly tended to subvert this desirable state of things.

5. The tenant-at-will system is unquestionably a serious evil, and most hurtful to agricultural prosperity, and I am strongly inclined to the opinion that some such measure as is proposed by the Famine Commissioners might do something towards remedying it. I can scarcely hope that it would completely meet the case, for, although the law were to offer such facilities for the acquisition of security of tenure, it would still remain to be seen whether the cultivators generally would avail themselves of its provisions. It may, however, reasonably be presumed that a large proportion of the best and most thrifty ryots would gladly do so. The danger, as it seems to me, would lie in over-estimating rather than in underestimating the amount which the landlord really gains by his tenant not having occupancy rights. It is quite clear that the system tends to impoverish the land and deteriorate its value; in fact to keep it at a *minimum* of productiveness. Now when bad seasons come, the tenant, already sufficiently weighted, probably finds himself unable to cultivate, gives in his razinamah, and retires from the struggle. The land is either for a time thrown out of cultivation, or is again rented in the most unfavorable circumstances for the landlord. It may therefore be assumed that it would be for the interest of the latter in the long run to fix an equitable rent and give the ryot that security which can alone ensure to him the fruits of his labor and expenditure.

6. Not having any practical knowledge of the working of the law as mentioned in paragraphs 41 and 42, I would rather decline to remark on the subject.

Read—also the following letter from J. F. PRICE, Esq., Collector of the Chingleput District, to the Secretary to the Board of Revenue, dated Saidápet, 16th July 1881, No. 273 :—

I have the honor to reply to the Proceedings of the Board of Revenue, Miscellaneous No. 3955, dated 13th April last, and to express may regret that, owing to my having been on leave and to my time having since my return been fully occupied with other matters, I have been unable to do so at an earlier date.

2. I do not quite comprehend upon what precise points an expression of one's views is sought. The drift of the remarks of the Famine Commission is, I take it, that it would be desirable to give all actual cultivators of the soil, who are sub-tenants and occupiers, some permanent rights of occupancy in order to enable them to meet times of distress, thus improving their status, to put down rack-renting, and to place Curnams of settled estates in such a position that they would have to render accounts to Government whenever required.

3. It would, no doubt, be highly desirable if something of the kind suggested as regards sub-tenants and occupiers could be done, but any decided move towards such an improvement would be met by covert opposition and intrigue to an extent which, I feel assured, would be far greater and more prolonged than would seem to be anticipated.

4. Madras Act VIII of 1865 is an enactment which is supposed to guard the rights and to protect the interests of tenants and sub-tenants, having due consideration, at the same time, for those of landlords. My Sub-Collector, Mr. Farmer, is drawing up a paper in which it is proposed to bring forward some of the iniquities which can be perpetrated under this Act and to show what intrigue and misrepresentation on the part of persons connected with the landed interest in this very district took place when the Bill of Act VIII of 1865 was under consideration. This I shall submit in due course for perusal.

5. The whole Act requires careful revision and alteration. Whatever may be *implied* by it—the ablest Civilian Judge, who has ever sat upon the Bench of the High Court of this Presidency, once remarked to me that it was the most difficult Act in the Statute book to comprehend—it is practically in favor of the landlord and against the tenant, and the former has, as far as I can see, not been slow to perceive his advantage and to avail himself of it. It is the weak who should be protected against the strong! it is the strong who are enabled by the law, ostensibly designed in the favor of the weak, to oppress. In this assertion I believe that I should be borne out by the experience of every officer who has ever had any practical acquaintance with the Act.

6. It would be a very difficult task indeed, desirable though it might be, to give effect to the suggestions of the Famine Commission in regard to occupancy tenants. This class of persons is, as a rule, poor; they live from hand-to-mouth and are liable to be at any time turned out without a penny of compensation for improvements made. They are very frequently ground to the dust by the landlords, who make them pay for the actual tenants by seizing their crops, &c., in satisfaction of arrears of rent, and they, generally speaking, are so impoverished that they cannot afford to fight their cases in the Revenue Courts and those to which the judgment of a Collector can be taken in appeal.

7. A step towards improvement of their condition would be effected if it was made illegal to attach crops, &c., unless it could be shown that they were grown by, or the actual property of, the registered tenants. Much good might also be done by removing entirely from the scope of Act VIII of 1865 all cases involving sub-leases, or sub-tenancies, and declaring that rents due under such contracts would be recovered only by suits in a Civil Court. This would apply equally to lands held under a Government putta or in a settled estate.

8. I consider the petty zemindaris, muttahs, shrotriems, and inam villages, with which the country is strewn, one of its greatest curses from an agricultural point of view. I add to these in this district the mirassi system, which has for

years been a bar to improvement. The mode of collecting the arrears of revenue due by the owners of the properties mentioned above is cumbrous and lengthy, whilst on the other hand the powers which the law gives them to screw their tenants and harass and worry sub-tenants are very considerable.

9. If all rents in kind were abolished and a money-rate insisted upon in all settled estates, &c., another very fruitful source of tyranny on the part of landlords and of suits in Revenue Courts would disappear. This would require a survey and settlement, but I do not see why Government should not, except in the large and ancient zemindaris which are hardly in the nature of tenancies, enact that this should be done, and that all charges for second crop, irrigation of dry lands from tanks belonging to proprietors, &c., should be the same as in Government lands. Certainly one half, if not more, of the suits which come into Revenue Courts arise from there being no fixed money assessment, and it is not by any means an infrequent occurrence for landlords to drag tenants and sub-tenants into the Criminal Courts on the ground that they fraudulently carried off a portion of the crops to which they were not entitled.

10. As regards the question of Curnams, it appears to me most absurd that an individual, who is practically a private employer, cannot, though he can appoint a servant of this class, get rid of him except by a Civil Suit. I think that the nomination to the office of Curnam in settled estates should lie with Zemindars, but that in the interests of the State, the power of appointment and dismissal should lie with Collector of the district, who should have authority to compel such Curnams to, whenever called upon to do so, submit such statements, returns, and accounts as Government may, from time to time, direct.

11. As regards the remarks made in paragraph 40 of the Commission's observations, I would advance that the Land Revenue Settlement could hardly have contemplated that ryots were not to sub-let. If this had been the case, Clause 3, Section 1, Act VIII of 1865, would have been uncalled for. I do not see what advantage could be attained by the suggestions made in the concluding portion of the paragraph quoted above. The present arrangements would only reappear under a different form, the sub-tenants being called the servants of the tenant, instead of what they now are.

12. The subject of allowing long possession as a sub-tenant, or certain other circumstances, to give an actual right of occupation, is one which, unless Government wish to raise a nest of hornets about their ears, must be entered upon with considerable caution. I think that, for the present, it would be enough to curtail the powers which landholders have under Act VIII of 1865; to force all tenants sub-letting to recover their dues in a Civil Court only; to protect, and that very closely, the poperty of sub-tenants from attachment and sale on account of rent due by the registered tenant's; to abolish all rents in kind and compel the introduction of a survey and money-rates in all shrotriem, inam villages and permanently-settled estates, not being ancient zemindaris; and to bring all Curnams in zemindaris, &c., under the control of the Collector.

13. To carry out these measures, if deemed feasible and desirable, would probably take some time and would pave the way for, at some future period, legislating upon the question of occupancy right, if it was found that the alterations in the Act, &c., suggested did not render the position of cultivating sub-tenants sufficiently secure.

Resolution—dated 26th September 1881, No. 2122.

By the order contained in the Board's Proceedings quoted above the Government refer for an expression of the views of the Board certain extracts from the report of the Famine Commission relating to the position of cultivating tenants in the Madras Presidency. These extracts embody the opinions of the Commissioners upon the questions of the sub-letting of land for cultivation and the position of enants in relation to their landlords.

2. Regarding the question of sub-letting the Commissioners, having stated that the occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator, proceed to discuss the means by which, in their opinion, it might be possible and desirable to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights; and they recommend that the practice of sub-letting by an occupancy tenant should be discouraged or even forbidden; and further that, when such right is possessed by a tenant, it should be forfeited by his ceasing to be a *bonâ fide* cultivator and pass to the person who, as his sub-tenant, occupies his place.

Paragraph 31.

3. Upon these recommendations the Board observe that whereas their object is to prevent rack-renting by middle-men and the oppression of the cultivator, it has not been proved that the evil which it is desired to remove exists in this Presidency to such an extent as to justify a measure confiscatory in character, and which, if it were possible to carry it out, would involve the complete subversion of established rights and customs relative to property in land. Nor is it apparent how the remedy proposed would have the effect of materially improving the cultivator's position; for, if it prevented him from having recourse to the money-lender in time of need, the benefit would be by no means unmixed either to himself or to the community; unable to borrow he would be unable to till and loss would be the result to both. The Commissioners seem to be somewhat uncertain whether their proposal will be found practicable, and the Board have no hesitation in stating that it would be quite impossible to put it into practice. Throughout the world, it is in the natural order of society that some men possess capital and some do not; the former become owners of the land and the latter rent it from them or work on it for hire. Such an enactment as that proposed would only cause a temporary disturbance of existing relationships, which in process of time would revert to their original state.

4. In the next paragraph the Commissioners make suggestions for securing to tenants-at-will occupancy rights in the lands which they hold without injury to the landlords. Unless the word injury is here used in a restricted sense, it is difficult to conceive how this proposal is feasible. The Commissioners, however, explain how they would propose to carry out the measure, viz., by making the tenant pay an enhanced rental, the increase being calculated with reference to "the annual amount which a landlord gains by his tenant not possessing occupancy rights." The Board believe it would generally be found impossible to frame an estimate in the manner described, and even if it were possible to do so, the advantage to the tenant would be doubtful. Upon this point attention is invited to the remarks of the Collector of Salem with which the Board entirely concur.

Paragraph 32.

5. Turning to the first paragraph* of the second extract, it is hardly necessary to say that power† to sub-let is the undoubted right of every holder of land under a ryotwari putta. This right and that of transfer by sale are essential privileges of the holders of land under the ryotwari system which should on no account be interfered with. As regards the proposal that sub-tenants should be recognized and the area, &c., of their holdings recorded in the accounts kept by Government, the Board consider that such a measure is neither necessary nor expedient. Such registration would not affect the status of a sub-tenant, while it would throw upon the Revenue establishments, already over-worked, an enormous amount of additional labor.

* Paragraph 40.

† Board's Proceedings, dated 22nd March 1881, No. 473 (G.O., 11th May 1881, No. 740).

6. The remaining paragraphs‡ requiring notice bear upon the relation of Zemindars and Inamdars to their tenants. The amendment of the Rent Recovery Act (VIII of 1865, Madras) has been proposed on former occasions, and the Board are of opinion that the revision of that enactment should be no longer delayed. The object to be kept in view should be to define existing rights as established

‡ Paragraphs 41, 42, and 43.

by customary usage and make provision for their enforcement, and not to create by statue new relationships between landlord and tenant. In connection with this part of the subject the Board would refer to their Proceedings§ noted in the margin and repeat the recommendation made at paragraph 8 thereof.

§7th March 1879, No. 618.

(True Copies and Extract.)

(Signed) E. GIBSON,
Acting Secretary.

To the Secretary to Government, Revenue Department.
Copy to all Collectors.

Minutes by the Honorable W. HUDLESTON, dated 17th March and 19th October 1881.

Minutes by the Honorable D. F. CARMICHAEL, dated 3rd April and 14th October 1881.

Order—dated 29 April 1882, No. 437, Revenue.

Land Revenue, No. 24.

In the first of the papers read above, the Government called upon the Board of Revenue to enquire and report whether the results anticipated by them, as affecting the fixity of tenure of the Zamindári ryots, from the judgment of the High Court in Special Appeal No. 9 of 1870,* had ensued and to what extent, and the second paper is their reply. The third embodies a letter from the Government of India asking for the opinion of this Government on certain suggestions made by the late Famine Commission for improving the position of tenants in this Presidency. The next following two papers are the only replies yet received to the order of this Government inviting remarks on the suggestions last referred to.

* Volume VI, Madras High Court Reports, pages 161—174.

2. The Famine Commission, in the extracts from their report printed in the G.O. of 18th March 1881, refer particularly to the custom of sub-letting by holders of occupancy rights, which they consider to be attended with ill-consequences, and also, adverting to the High Court's judgment above referred to, point out the expediency of legislation in view to the protection of the occupancy rights of the Zamindári ryot.‡ They suggest that it should be discouraged, or even, if possible, forbidden.†

† Paras. 31 and 32.

‡ Paras. 41—43.

3. The far more momentous question last indicated will be noticed first. Whatever may be the precise scope and effect of the High Court's ruling, there seems to be no longer any room for doubt that it has been judicially interpreted, though yet within a limited area§, as declaring the tenure of a Zamindári ryot terminable at the will of the Zamindár at the end of the year, and has had the effect, over a more extended area, of enabling the Zamindárs to impose arbitrary terms and levy enhanced rents from the ryots. It is clear, therefore, that Madras Act VIII of 1865 has failed to assure to ryots holding under assignees of the public revenue that permanency of tenure, as

§ In Vizagapatam generally and in one case in Nellore—*vide* Collector's letters recorded in Board's Proceedings, dated 7th March 1879, No. 618

Section 12.

well as security against exaction and oppression, which that enactment, as likewise the Regulations of 1802 * and 1822 † which it consolidated, contemplated and intended to assure to them.

* XXX Section 12.
† IV and V, Section 8.

4. The position, having regard to the magnitude of the interests involved, is fraught with anxiety, and the Right Honorable the Governor in Council is satisfied, that remedial measures cannot be safely deferred any longer. He accordingly resolves to appoint a Committee, composed of the gentlemen named in the margin, to draft a Bill calculated to remove all doubt as to the conditions of a Ryot's tenure of land. The Government would be disposed to distinctly lay down, that the ryot and his heirs or assigns possess a right of continuous occupancy, subject only to the condition of payment to the Sirkar or its assignee of the "*Sirkar*" *share* of the crop or its value as established by proved custom, mutual agreement or decision of competent authority, and evidenced by the Puttah and Muchilka, unless these documents have been dispensed with by proved mutual agreement—with liberty to dispose of such right by sale, gift or otherwise, until evicted by due course of law for failure to discharge such legally established and limited charge on the land, or to enter into an agreement in the form prescribed by law with respect to such limited charge.

Honorable Mr. Carmichael.
Honorable Mr. Sullivan.
Mr. Forster Webster.
Mr. H. E. Stokes.
The Government Pleader.

5. The Government consider that, as suggested‡ by the Famine Commission, the Bill should provide that all tenancies in Zamindari or Inam lands *primâ facie* carry a right of proprietary occupancy, and should throw on the Zamindár or Inámdár the *onus* of proving the fact from which a non-occupancy tenure has to be inferred. In like manner, where a special contract at the time of *first* occupancy, reserving to the superior holder the right of eviction or a higher rent, is alleged, the *onus* of proving such contract should rest on the party pleading it.

‡ Paragraph 42.

6. As regards the question of sub-letting, the Government fully agree in the views expressed by the Collector of Salem and the Board of Revenue as to the inexpediency of any State interference. Whatever ill-consequences of such a system, due perhaps to peculiarities of tenure, are observed in other parts of India, none such are apparent in this Presidency. Here, in the first place, the number of ryot proprietors, who do not take part in the cultivation themselves, is comparatively very small; secondly where they have sub-tenants cultivating for them, they treat them well; thirdly their position is quite different from that of Zamindárs and Inámdárs—the assignees of the State revenue from land.

7. The Famine Commission assume a state of things under which "the privileged tenant" has no interest in improving the land; but such is not the case in this Presidency, where the Government ryot fully appreciates the benefits which accrue to himself by the improvement of the land, which is his own property subject only to a limited charge for State dues; his available means are as a rule devoted to its improvement.

8. In this Presidency, the ryot proprietor is, in the vast majority of cases, to all intents and purposes the "*bonâ fide cultivator*" to whom the Famine Commission desire to restrict the occupancy right. If, however, by "bonâ fide cultivator" they mean that person only who actually holds the plough or personally labours on cultivation operations, the measure which they recommend, viz., "*to prevent any one who is not a bonâ fide cultivator from acquiring or retaining such rights*" would be subversive of property in land throughout the country, and would, by depreciating the value of land, defeat the very object in view, viz., to augment the wherewithal for the improvement of land. As pointed out by Mr. Stokes, the compensation which the cultivating tenant would have to make to the expropriated owner would, for many years, leave little to the former to invest in the improvement of land; while, at the same time, the savings of men engaged in trade and other occupations, now invested therein, would be lost to it. The whole scheme is, as clearly shown by Mr. Stokes,

impracticable, as it would very often be most difficult, if not altogether impossible, to ascertain whether the holder of the occupancy right were the "actual cultivator" or not, whatever might be the precise signification intended to be attached to the term.

9. Ordered that the following letter be despatched to the Government of India :—

(Here enter, No. 408, dated 29 April 1882.)

(True Extract.)

(Signed) E. F. WEBSTER,
Acting Secretary to Government.

To the Hon'ble Mr. Carmichael
Do Do Do Sullivan
Do Hillebrand Esqr
Do E. Stokes Esqr
The Government Pleader
The Board of Revenue

Exd. W. H. French.

Copies.

MINUTE BY THE HONORABLE W. HUDLESTON.

From Government of India, Home, Revenue, and Agricultural Department, dated 24th February 1881.
Extracts from Famine Commissioners' report, *re* Tenant right.

The very important and interesting questions raised in these extracts have long occupied my attention and that of my Honorable colleague Mr. Carmichael, who has a mass of papers connected with it, which I handed to him when he accompanied His Grace the late Governor on his tour to the Northern Cirkars, and the need or otherwise for legislation is being considered by us.

I am of opinion that in this Presidency, all ryots, whether in Government or Zemindari lands, have occupancy rights which assure them permanence of tenure on the conditions of holding, unless these should have been expressly modified by mutual agreement at the time of first occupying fresh land.

The provisions of the Regulations of 1802 were intended to be maintained by the Rent Recovery Act of 1865, and in the Board's Proceedings which I drew up when the last Act was in Committee of Legislative Council, I endeavored to record fully what were the rights and reservations contemplated by the law.

I have none of the papers at hand to refer to, but I have never been convinced that the subsequent decisions or rulings of the High Court have altered the footing of ryots, which I conceive to be that they are entitled to retain their lands and deal with them by gift, sale, mortgage, or otherwise, so long as they or their representatives continue to pay the amount duly settled on them as the Sirkar share, whether retained by Government or made over to a Zemindar, the principles on which this is to be calculated being established from time immemorial and constituting a property-charter which is superior to any so-called "landlord's right" whether of the State or the Zemindar.

This position in no way bars the possibility of a Zemindar possessing or acquiring the proprietary right in certain land—just in the same way as the State possesses it in all waste or unreclaimed land—but merely asserts that the Ryotwari tenure, pure and simple, includes occupancy right, equivalent to full proprietary right subject to the one condition of paying the Sirkar dues.

That by special contract land may be occupied for cultivation on more restricted conditions of tenure, I do not dispute; but in the absence of such special contract, the conditions that I have named arise and continue in my opinion.

It is in no way that I can see opposed to this view that ryots may have sub-tenants, and I believe it will be found that, if fairly analysed, the decision of Sir C. Scotland and Mr. Justice Holloway—on which so much stress has been laid—does not affirm anything more than the right of the possessor of the "*Ryot* property" in any land to let it out for cultivation on any terms that he may choose.

If I rightly remember, the land concerned in that suit was Pagoda Inam, which had been managed by the Collector, who admitted a tenant for a term of years, on the expiration of which the Pagoda Dhurmakartas, who had been subsequently placed in control of the lands, required an advance of rent on renewal their right to which the Court upheld. The proprietary right in the land was in the case in question, I think, shown to belong to the Temple, who, in fact, possessed what I have termed the "Ryot property" in it, and were as free to settle the conditions of cultivation with a sub-tenant as any ryot would be.

In Canara, for instance, the Mulgars have this proprietary right, and they have as sub-tenants "Mulgeni wukuls" or tenants on permanent lease, and "Chalgeni wukuls" who are yearly tenants.

In Malabar, the Jenmis occupy the same position, but I believe sub-holdings on *permanent* lease are there comparatively rare, though, whether the twelve years' limitation with conditions of renewal is more than a comparatively recent creation of the Courts, Mr. Wigram's late letter puts in question.

In Tanjore, the Mirasidars are recognised as having the same right.

The same is the case in Tinnevelly and in Chingleput.

In the Northern Cirkars, the "Kadim Ryots" are admitted to have the same position.

And I believe that, where we do not find it evidenced by unbroken tradition and existing practice, the cause can be unmistakably traced to the period of oppression and general disturbance by hostile incursions which preceded our rule.

Where or when settled rule was established and equity prevailed, there and then the right immediately revived, if it had been temporarily in abeyance.

The right of the State in the land is I consider strictly limited by express conditions.

And it goes without saying that the State could not *confer* rights on others, be they Zemindârs or Inâmdârs, which it did not itself possess.

I hold it to be unmistakably proved that the State cannot arbitrarily evict a ryot who is willing and able to discharge the State dues.

What those dues are is established by ancient law, and I am personally inclined to the opinion that they constitute the maximum which cannot be exceeded even by special contract, but I am scarcely prepared to say that the State right would not extend to the forbidding of extension of cultivation if terms in excess of this limit were not agreed to by an applicant for land. The case is, however, so extreme, would be so utterly improbable and impolitic on the part of the State, and so suicidal on that of the Zemindâr or Inâmdâr, that it needs little discussion.

My view then is, that ryots are, to say the least, joint proprietors in the soil with the State, or those to whom State rights have been assigned, and if this be admitted—and I am confident it can be established—then I think the ryots are in the position which the Famine Commissioners desire to secure to them, and in which it rests mainly with the Courts (Revenue or ordinary) to uphold them. I admit that this does not cover the whole question. A Zemindar, for instance, may possess both the Ryot property and the assigned State property, and the question of his relation to his tenantry may assume a far more momentous position than that of a ryot to his sub-tenant; but such exceptional cases are comparatively rare, and in this Presidency at least attain, I conceive, very small proportions, comparatively speaking.

To recognise, affirm, assert, and uphold the true relations of the ryot and the Sirkar or its assignee as joint proprietors in the soil with mutually defined rights, would, I conceive, at once take the moot question out of the political phase.

There would still, however, remain the question of sub-tenants and the rights that may properly be assigned to them, and, highly important though it be, it admits, I conceive, of being dealt with, with far more regard to general considerations than does the former, but I am by no means sure that it is one which at the present time at any rate calls for State interference.

The immediate necessity is, in my opinion, to place the ryot on an impugnable footing as a landlord—*joint* if you will—but still unquestionably possessing rights utterly incompatible with the position of a tenant whether on lease or at will.

Any questions that may arise between the possessors of this Ryot-proprietary right and their sub-tenants had, I am inclined to think, better be left to the Courts,

I am not aware of any decisions of Court which are clearly counter to this view.

I remember that there was one by Mr. Collett in Ganjam or Vizagapatam which I thought opposed to it, but I have not got it at hand to refer to and at any rate it was *prior* to the Rent Recovery Act.

There have, I believe, been incidental expressions by the High Court and the Law Officers, such as that the putta is a lease, which are, I think, mischievous and based on wrong premises, but I consider these of little importance if our Courts (Revenue or ordinary) will study the question and acquaint themselves with first principles and the history of the development. The "putta" is nothing but an extract from a village register of holdings and State dues on them. As the P. C. I think said, it is not a muniment of title but only evidence of holding.

The Putta and Kabuliat have been sometimes termed lease and counterpart, but these are misnomers if intended to reduce the ryot to the position of a tenant under a landlord.

Nearer resemblance might be admitted to copyhold. But even then it would be erroneous to conceive that right is derived from the putta or is to be based on it.

It existed centuries ago when puttas were not, and would continue to exist if all the puttas in the country were converted into pulp.

I have known all the ryots of a taluk in Canara toss their "puttas" away and walk off from Jamabandy, saying they did not want them at all, because a Ceded District Head Sheristadar tried to insert some "Mogulai" limitation in them which was novel.

which can exercise an equitable jurisdiction, I imagine, even in questions of contract whether express or implied.

It would, in my opinion, be very questionable policy to interfere with the liberty of contract which a landlord possesses in the eye of the law.

When question is raised of the possibility of property in the soil as a matter of abstract right, we pass out of the range of practical politics.

(Signed) W. HUDLESTON.

17th March 1881.

MINUTE BY THE HONORABLE MR. CARMICHAEL.

I do not see what is to be gained—but further delay—by asking the Board and the other officials to report.

I gave the papers which the Famine Commissioners summarize regarding our Rent Law, to Mr. Cunningham; and I am thankful he has given the subject a friendly shove.

Mr. Hudleston appears to fear no evil from that High Court Judgment. He will find it there laid down that our Law gives no fixity of tenure; that whether a tenant at the end of the fusly shall be offered a fresh puttah or not by his Zamindâr is a question for the Civil Courts—and *what have these tribunals to guide them!!*

Precisely the same state of things came to pass in Bengal—when it was enacted, a quarter of a century ago—as a short and convenient mode of settling an interminable question—that a man who had been on the land (including his father's time) for 12 *years* had *fixity of tenure*; the question of *at what rent* is a separate one—our law is very good in this respect, clear and fair—but of course quite useless from its omission to say that Ryots have a right of occupancy.

When I left Madras, I was in correspondence with the Chief Justice on the subject; he, at least, quite sees how hard the High Court Judgment hits the Ryots of a Zamindâr; and promised me every help in bringing forward an Amendment of the Law.

II. As to occupancy Ryots, *i.e.*, OUR own Ryots and THEIR tenants; Sir Thomas Munro said they are the Crown's tenants *in capite*; very different from *assignees* of the revenue, such as Zamindârs, Inâmdârs, Jagirdârs—and there should be no interference between them and their sub-tenants.

(Signed) DAVID. F. CARMICHAEL.

JEYPORE,
3rd April 1881.

MINUTE BY THE HONORABLE MR. CARMICHAEL, on Board's Proceedings, dated 26th September 1881, No. 2122.

As I have said already—I consider our *Puttadar* the Crown tenant *in capite*; and I would have no interference between him and his Cultivator. In the first place, there are very few of them who do not cultivate the land, themselves; 2ndly when they have people cultivating for them, they treat them well: 3rdly their position is quite different from that of Zamindârs and Inamdârs—the assignees of the public revenue from land.

II. As to the Zamindar's tenants, I have written *buckets* on their miserable position, both at the time Act VIII of 1865 was before the Legislative Council, and afterwards in 1871, when I was in the Board of Revenue.

The Act, it was supposed, secured to the tenantry (1) fair rents and (2) fixity of tenure.

In 1871, however, a judgment of the High Court declared that no fixity of tenure was secured to them.

I showed that it was at least the intention of the Legislature to secure it; and that the omission to do so should be immediately supplied. For five years,

Mr. Sim kept that draft of mine in his box: when he left the Council, he politely handed it back. It was then sent out for the observations of the Collectors.

Meanwhile I have recently had an opportunity, in my tour in the North, of making my own observations. I find that in every Zamindari, even in Vizianagaram, where, if anywhere, there is a liberal and enlightened administration—every yearly patta now runs "at the end of this term I have no further claim to occupy this land." It is not that ryots are turned out neck and crop, frequently: but they are screwed up or liable to be screwed up to any rent—in the fear of being turned out, if they stand up for the rates which are declared the proper ones in that unfortunate Act, which omitted to secure—fixity of tenure.

We must have fresh legislation and the sooner the better.

14th October 1881. (Signed) DAVID F. CARMICHAEL.

MINUTE BY THE HONORABLE W. HUDLESTON.

I think we are all fairly agreed on this subject. The evils of sub-letting denounced by the Commissioners do not exist in this Presidency to any extent calling for the proposed remedy. The case of sub-tenants is not such as to need the protection proposed. The uncertain tenure of "occupancy tenants" is a recent creation by our Courts by an interpretation of a Rent Recovery Law which was intended to affirm the "proprietary rights of ryots," and the point should be cleared of all doubt by local legislation.

The Zemindar is merely as such the assignee of State rights. The State could not confer on others what it did not possess itself, and it never possessed the right to demand more than the State share of the produce of the land, or to oust the "occupying ryot" who satisfied this limited demand. The law should be amended to establish beyond question this ancient and, till late years, unquestioned position.

The requirement from Zemindars' Kurnams of the statistical information required for State or public purposes should be enforceable by law, and a measure to this effect has long been contemplated here but is complicated by other proposals regarding village service.

I hope to take it up shortly.

19th October 1881. (Signed) W. HUDLESTON.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—again G.O., dated 13th March 1876, No. 366.

READ—also the following Proceedings of the Board of Revenue, dated 7th March 1879, No. 618:—

Read—the following file of replies to Board's Proceedings, dated 28th March 1876, No. 851:—

Letter from the Collector of	Ganjam,	dated 11th June 1877,	No.	1956.
,, ,, ,,	of Vizagapatam,	,, 28th Oct. 1876,	,,	1524.
,, ,, ,,	of Godávari,	,, 2nd June ,,	,,	151.
,, ,, ,,	of Kistna,	,, 14th Sept. 1877,	,,	1993.
,, ,, ,,	of Nellore,	,, 16th Nov. 1876,	,,	3214.
,, ,, ,,	of Cuddapah,	,, 19th Sept. ,,	,,	238.
,, ,, ,,	of Bellary,	,, 27th Aug. 1877,	,,	681.
,, ,, ,,	of Kurnool,	,, 7th July 1876,	,,	304.
,, ,, ,,	of Madras,	,, 28th ,, ,,	,,	252.
,, ,, ,,	of Chingleput,	,, 20th June ,,	,,	374.
,, ,, ,,	of North Arcot,	,, 17th Aug. ,,	,,	387.
,, ,, ,,	of South Arcot,	,, 26th July ,,	,,	327.
,, ,, ,,	of Tanjore,	,, 24th Jan. 1877	,,	287.
,, ,, ,,	of Trichinopoly,	,, 15th June 1876,	,,	161.
,, ,, ,,	of Madura,	,, 12th Aug. ,,	,,	300.
,, ,, ,,	of Tinnevelly,	,, 8th July ,,	,,	431.
,, ,, ,,	of Coimbatore,	,, 10th June ,,	,,	117.
,, ,, ,,	of the Nilgiris,	,, 9th ,, ,,	,,	32.
Commr.	recorded in Board's Proceedings,	dated 7th March 1879,		
	Mis. No. 2224.			
Collector of	Salem,	dated 15th Nov. 1876,	No.	301.
,, ,, ,,	of South Canara,	,, 15th ,, ,,	,,	2127.
,, ,, ,,	of Malabar,	,, 25th Aug. ,,	,,	226.

Resolution—dated 7th March 1879, No. 618.

In their Proceedings, dated 8th September 1871, No. 3876, the Board called attention to the judgment of the High Court in Special Appeal No. 9 of 1870, and urged upon Government the necessity of obtaining an enactment affirming in unmistakable terms the right of occupancy possessed by Zemindari ryots, and in G.O., dated 13th March 1876, No. 366, the Government called on the Board to enquire and report whether the results anticipated by the Board had ensued and to what extent. The replies received from District Officers on the subject will now be forwarded for the information of Government. Many of them comprise discussions at considerable length as to what the respective rights of Zemindars and their ryots really are, but as the object of the Government in making this reference was merely to ascertain facts with regard to the operation of the judgment in question, these discussions will be but briefly noticed in the remarks which will be made below.

2. The Collectors of *all* Districts except Ganjam, Vizagapatam, and Nellore report that the ruling in question has had no effect in their Districts. Most of these Collectors and officers consulted by them incline to the opinion that this is mainly owing to the decision of the High Court in the case in question not being widely known, but as a matter of fact nothing has as yet resulted from it to the detriment of the ryots.

3. Mr. Grahame when Acting Principal Assistant in charge of Ganjam is unable to cite any instance of an ejectment which can be attributed to the judgment of the High Court in the case referred to, but alludes to general complaints of extortionate practices brought against the Zemindars of Chíkati and Kallikót in 1875 as showing that the decision has had the effect of emboldening landholders successfully to enforce arbitrary terms upon their tenants, and of paralyzing the efforts of the tenants successfully to resist the demands of the landholders. In the case of the Chíkati Zemindar, however, there seems to have been a thorough reconciliation between the Zemindar and the ryots after the death of the Diwan, and Mr. Davidson, who was Collector of Ganjam when the complaints against the Kallikót Zemindar were preferred, regarded the ryots' claims as unreasonable and out of the question.

4. From Vizagapatam there is a general *consensus* of opinion that no ryot can now successfully contest a suit of ejectment. Some hold that the decision in question changed the law, others that it merely gave legal sanction to the previously existing practice, but amongst the many Revenue and Judicial Officials, Zemindars and Diwans consulted by the Collector there is not one who expresses an opinion that the effect of the decision has been other than disadvantageous to the position of the ryot. The Acting Senior Assistant Collector writes: "Since the ruling has rendered it clear that tenants have no occupancy rights, the Civil Courts are extensively resorted to, and the present practice is to pass a decree of ejectment on proof that the term of the putta has expired," and this statement of the existing state of affairs seems to be fully borne out by the other testimony adduced.

5. From Nellore the Collector reports that he does not learn that the tenure of lands generally has been rendered precarious by the ruling; but two cases* are cited in which it is stated that a decree in favour of the Zemindar of Kálahasti was specifically based on the High Court's decision in question. Copies of the District Court's judgments in both cases are forwarded. In only one of these, viz., Regular Appeal No. 29 of 1873, do the Board find any allusion to the decision; but the case is an important one, as it appears that under the High Court's ruling the District Judge, though expressing much regret, considered himself to be bound to decide against a tenant of seventy-three years' standing on the ground that his lease was clearly from year to year, determinable at the close of any particular fasli.

* Regular Appeal No. 21 of 1873.
" " " 29 " "

6. It will thus be seen that it is only from three districts that the decision of the High Court in question is reported to have led as yet to the results anticipated by the Board. As regards Ganjam the connection between the cases cited and the High Court's decision is not very clear; in Nellore, though the ruling has as yet had no general effect, it has received judicial notice in very decided terms; and in Vizagapatam it seems to be generally conceded that the decision has in effect dealt a death-blow to the hopes of the party who contended that the Zemindari ryot was not a mere tenant-at-will.

7. The Collector of Cuddapah remarks that, as there was a special contract in the case in question, he doubts whether the ruling goes so far as to lay down that every tenant can be ousted at the caprice of his landlord, and the same view is advocated at great length by the Diwan of Venkatagiri. There is no doubt much truth in this view, but it seems to be clearly established that wherever the judgment has been relied on by landlords it has had the practical effect of rendering the tenant's position much less secure. Perhaps this might be counteracted by getting a well-selected case brought under the judicial cognizance of the High Court, as suggested in paragraph 31 of the Diwan's letter, and Collectors might be instructed accordingly; but local customs differ greatly and a really representative case may not be easy

to find. The Board incline to think that the whole question of the relations of Zemindars as landlords stands at present on a very unsatisfactory footing, and that the sooner the difficulty is faced and dealt with in a thorough and efficient manner the better for all parties concerned.

8. The questions of their relations to their tenants, of their liabilities in times of pressure and famine, of their responsibilities as regards keeping up public works† on which the well-being and indeed the lives of numbers depend, of the status of village officers in Zemindaris, of the maintenance of village accounts and collection of statistics, each and all of these questions seriously demand attention, and the Board do not see that it can be efficiently given unless an officer or a commission is specially deputed for the enquiry. In their opinion the subject is large enough and important enough to render such a course most desirable.

† G.O., Public Works Department, dated, 16th September 1878, No. 722-I.

(A true Extract.)

(Signed) J. STURROCK,
Acting Secretary.

To the Secretary to Government, Revenue Department, with a file of replies, and copy of Board's Procs., 7th March 1879, Mis. No 2224.
" all Collectors.

READ—also the following G.O., dated 18th March 1881, No. 475, Revenue.

Read—again the following letter from C. L. TUPPER, Esq., Officiating Under Secretary to the Government of India, Home, Revenue and Agricultural Department (Revenue), to the Secretary to the Government of Madras, dated Fort William, 24th February 1881, No. 160:—

I am directed to forward an extract* from the Report of the Indian Famine Commission, Part II, Chapter III, Section 1, on the subject of the position of the tenants in the Madras Presidency, and to request that the Government of India may be favored with the opinion of His Excellency the Governor in Council on the points raised.

* Paras. 31-32 and 40 to 44.

ENCLOSURES.

Extracts from Report of the Indian Famine Commission (Part II) Chapter III, Section 1.

Para 31. But the question of subletting seems to us to be one of even greater importance. The more valuable the occupancy right becomes by reason of such measures of protection as we have advocated, the more need there will then be of guarding against a custom which is everywhere prevalent in India, under which the privileged tenant is apt to turn into a middleman, subletting the land and living on the difference between the rack-rent and the privileged rate secured to him by the law. The occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator; and the object of the law should be to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights. If this can be secured, the chief danger in the way of making such rights marketable will be removed, for they will not be able to pass into the hands of money-lenders, and if a tenant who becomes deeply involved is sold up, his land will pass to another tenant, presumably a more thrifty man, and the public interests will not suffer by such a substitution. We therefore recommend that concurrently with the extension of the right of transfer the practice of subletting by an occupancy tenant should be discouraged, or even, if possible, forbidden. Care must no doubt be taken lest such a measure should work harshly. But if a tenant, for a long period, fails to keep up the stock required for cultivating his land, or otherwise ceases to be by occupation and habit a *bonâ fide* cultivator, the rights he or his ancestors acquired by cultivating the soil might reasonably pass from him to the person who, having become the actual cultivator, occupies his place. We conceive that it would not be difficult for the Rent Courts to investigate and

decide the question of fact, whether a tenant with occupancy rights has or has not wilfully ceased to be a habitual cultivator in respect of the whole or any part of his holding; and when such lapse is established the occupancy right might be held to have passed to the person to whom the actual cultivation of the land has been transferred.

32. The tenants-at-will form a large and an increasing class, the growth of which in some parts of India cannot be looked on without serious apprehension. They are kept in a situation of absolute dependence on the landlord, which takes away the desire to improve the land or to raise their own position, or to lay by anything from the profits of agriculture. The soil, therefore, is not unlikely under such tenants to become year by year less productive, and the tenant, having neither credit nor stores to fall back upon, becomes a prey to the first approach of famine. It is much to be desired that for tenants of this class some means should be provided by which they might, without injury to the landlords, secure occupancy right in the lands they hold. It seems not impossible that a plan might be adopted under which, with all reasonable attention to the interests of the landlord and with suitable limitations as to the character of the holdings to which the plan would apply, an estimate should be made, either in the form of a rate per acre occupied or of a percentage on the rent paid, which shall represent the annual amount which a landlord gains by his tenant not possessing occupancy rights, and that on the tenant-at-will making good, by instalments during a certain number of years, a sum equal to the capitalized value of that amount, in addition to his present rental, he should thereby obtain the privilege and the advantages of security of tenure which attach to an occupancy tenant. No useful end would be obtained by our entering further into the details of such a scheme as this, but we think that the subject is of such importance as to call for the consideration of the Government. It would, we conceive, operate in the direction of restoring to the cultivating class the protection which they had under the ancient custom of the country against extreme pressure by rack-renting, but which they have, in a great measure, lost under our rule; and we hope that it, or some similar plan, may be found suitable for adoption, in order that those among the tenants-at-will who are the best cultivators, and the most thrifty persons, may have an opportunity of raising themselves from their present precarious situation to the more secure position of an occupancy-tenant.

Extracts from Report of the Indian Famine Commission, Part II, Chapter III, Section 1.

Para. 40. In consequence of the tendency on the part of those who are recorded as ryots to sublet their lands or part of them, and to live on the difference between the rents they receive and the revenue they pay to Government, a considerable class of subordinate tenants is growing up who have no permanent interest in the land, and who pay such high rents that they must always be in a state of poverty. These subordinates are not recorded or recognized in the Government registers, but the existence of such a class involves the same evils as we have dwelt on in the case of the tenants-at-will in Upper India. We think that the question should be submitted to the consideration of the Local Government, whether it is contemplated that, under the Land Revenue Settlement, Government ryots should be permitted to sublet their lands, and if so, whether measures should not be taken for recognizing the status of such sub-tenants and recording the area they hold, the rents they pay, and the conditions of their tenure.

41. In the Madras Presidency several amendments of the law regulating the relation of the great Zemindars to the class of cultivators who hold under them and who are in number about a million are desirable. For many years these tenants appear to have enjoyed rights closely corresponding to those of the Government ryot, and Regulation IV of 1822, which governed the subject, virtually recognized the existence of these rights, and provided various safeguards for their preservation. In like manner the Rent Act VIII of 1865 implies, without affirming, the existence of these rights and lays down several rules for their better enforcement. So far as we have been able to learn, the existence of these rights was never seriously questioned till a judgment of the High Court passed in 1871 was understood as laying down the proposition that a Zemindari tenant is *primâ facie* a tenant-at-will, and that in the absence of proof of a custom to the contrary, the landlord's right to enhance or eject must be presumed.

42. This view of the law (which it is possible that it may not have been the intention of the Court to affirm) is deprecated by other high Judicial authority, by the Board of Revenue and by numerous Collectors who have been consulted on the subject. The general result of the evidence received by the Commission is that the effect of the inadequate wording of the Rent Act of 1865, coupled with the ruling of the High Court, has been to alter the legal position of Zemindari tenants and to render it precarious, exposing them to many forms of oppression, and excluding them from all the benefits which it was the object of the Regulation which gave a legal status to the Zemindari system, and of the Rent Act to secure for every class of tenant; and that the ill-consequences of this defect in the law are likely to become more apparent as the new view becomes better known. We entirely concur in the opinion expressed by Mr. Justice Innes and the Board of Revenue, that legislation is necessary, and that its postponement cannot fail to prove detrimental to the status of this large class of cultivaters. The right course

would, we think, be to provide that all tenancies should, *primâ facie*, carry a right of occupancy, and to throw on the landlord the onus of proving the facts from which a non-occupancy tenure has to be inferred: such facts would be the commencement of the tenancy by a contract reserving to the landlord the right of eviction, or a clearly proved custom of eviction.

43. The same observations apply equally to the occupants of land in villages owned by Inamdars or other persons to whom Government has transferred all or part of its right to the land revenue. In these cases, as well as in the Zemindaris, it is essential that the villages should be surveyed, village accountants kept, and all village papers and statistical returns duly furnished which are needed for the information of the Government, and the record of the rights of the parties concerned; and we recommend that measures should be taken to carry out this suggestion.

44. The remarks we have made in the case of the Bombay Presidency as to the position of the subordinate tenants under the registered ryots apply with equal force to the Madras Presidency.

Order—dated 18th March 1881, No. 475, Revenue.

Miscellaneous.

The extracts received with the foregoing letter will be circulated to the Board of Revenue and the gentlemen named below, with the request that they will favor Government with an expression of their views on the important questions therein discussed.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue.
" Hon. Justice Muthusami Aiyar, C.I.E.
" " A. Seshayya Shastri, C.I.E.
" " V. Ramayyangar, C.S.I.
" M. R. Ry. P. Chentsal Row Pantulu Garu.
" " P. Srinivasa Row Garu.
" " G. Muthusami Chetti Garu.

READ—also the following letter from P. CHENTSAL RAO, Head Sheristadar, Board of Revenue, to the Secretary to Government, Revenue Department, dated Mylapur, 27th April 1881:—

I have the honor to acknowledge receipt of the G.O., dated 18th March 1881, No. 475.

2. The points on which I am asked to give my opinion are, I believe, the following:—

1*st*.—Whether it is desirable to discourage or even forbid the practice of a tenant with occupancy rights subletting his land, and if they are permitted to sublet their lands, whether measures should not be taken for recognizing the status of such sub-tenants, and recording the area they hold, the rents they pay, and the conditions of their tenure.

2*ndly*.—Whether it is possible and desirable to improve the position of the tenants-at-will, by providing them with some means by which they might without injury to the landlords secure occupancy right in the lands they hold, and if so, what is the best means to be adopted for attaining the object in view.

3rdly.—Whether fresh legislation is not necessary to set the rights of tenants of Zemindars and Inamdars on a firmer footing than they now are, by providing that all tenancies should, *primâ facie*, carry a right of occupancy, the onus of the non-occupancy tenure being left to the landlord.

4thly.—Is it not essential that all Inam and Zemindari villages should be surveyed, village accounts kept, and statistical returns needed for Government, furnished, and if so, what measures should be adopted?

3. *First*—I do not think that it is desirable to prevent or even discourage subletting. To stop subletting would be stopping progress. Men desire not only wealth, but also ease, pleasure, social position and power, and they wish to get wealth with the least possible trouble, exertion and sacrifice, so that, when a tenant who has occupancy rights acquires sufficient wealth, the first thing he desires to secure is ease and pleasure. He would be glad to have £100 a year without toil by subletting his land to another rather than £200 by working on the land himself, provided the £100 are sufficient to maintain him decently. Is it proper to curb this natural desire? Is it just? And is it advantageous to society? I should say it is palpably unjust to prevent a man from doing what he likes with his property, and no amount of reasoning in the world will ever convince people who are told to relinquish a source of income guaranteed by custom that the deprivation of their rights is just; but I would go so far as to say that if the measure be really advantageous to the society at large, it may be introduced, since husbandry is a public benefit and contributes to the increase and plenty of provisions, but I do not think that such a measure would be in any way advantageous to society. Before I show that it would not be advantageous, I think it necessary that I should briefly state the several conditions on which lands are usually sublet in this Presidency. Lands are sublet (1) for a fixed share in the produce, all the expenses of cultivation being borne by the under-tenant; (2) for a fixed quantity of produce or sum of money payable to the landlord, the expenses of cultivation being borne by the under-tenant; and (3) for a fixed share in the produce, the agricultural stock being supplied by the landlord. As a rule, the under-tenant does not undertake to pay Government assessment due on the land, it being paid by the ryot having the occupancy right, and the cost of improvements is also borne by the latter. Thus the under-tenant is not responsible to Government for the assessment and is not under the necessity of raising capital to improve the land, but has every interest to cultivate the land well, as thereby he increases his own gains. It is true that if he had a more permanent interest in the land he would cultivate it better, but he may not be able to provide himself with the agricultural stock, to raise capital for improvements, and may not also be able to pay assessment to Government which often becomes payable before crops come to hand, and which in some years happens to be in excess of the income. There will always be a certain class of persons of this description who could and would cultivate lands with advantage as sub-tenants, but who could not do so as independent cultivators and I do not think it is at all desirable to discourage that class. An ordinary laborer can never all at once become a tenant with occupancy rights. The position of a tenant-at-will is the intermediate stage between a laborer in the field and a tenant with occupancy rights, and to do anything to discourage this intermediate class would be to discourage progress and social advancement. Another view of the matter is, if a tenant with occupancy rights knows that the moment he ceases to be a *bonâ fide* cultivator his occupancy rights would terminate, he would not cease to be a *bonâ fide* cultivator and thus deprive himself of his rights. Instead of having tenants with a fixed share in the produce as an inducement to cultivate the land well, he would have hired servants under such supervision as would constitute him a *bonâ fide* cultivator, and the consequence would be more indifferent cultivation and less produce to the country. Therefore, whether the question is looked at from an economical or social point of view or as a mere question of justice, it is clear that it is not desirable to deprive tenants of their power to sublet their lands at their pleasure. I may also mention here that the number of cases in which lands are sublet in this Presidency is exceedingly small, and cannot be even as much as 1 per cent. of the number of tenants with occupancy rights. There is, however, no objection to recording the area of lands held by such tenants, the rents they pay, and the conditions of the tenures.

4. With reference to the second point, nobody can deny the desirability of improving the condition of tenants-at-will. The interest of landlord is certainly not always a sufficient security to the public for the good management of land, and tenants cannot be made to trust entirely in the generosity of the landlord, and their interests made dependent on their good feeling and forbearance. But the best way of securing the object in view is not by compelling the landowners to sell their rights to tenants as suggested by the Famine Commissioners, a measure which even if possible and just would be highly unpopular, but by securing to tenants their own property in their own improvements. I think that if the tenant has added anything to the value of the land beyond the duration of his tenancy, the landlord should be made to purchase the improvements at its full value though the terms of the tenancies might be to the contrary. A law in the above direction will lead to the much desired and fearless investment of capital in land, and can in no way injure any party. The only possible objection to this is, that it will virtually give to rich tenants the power of acquiring the occupancy right of the land, as there are lots of cases where landlords are poor and unable to pay for the improvements; but since the Courts will award a fair rental and the landlord will have the lands back when the improvements are exhausted or he is able to pay for them, no real hardship can accrue to any party while the land benefits and the people with it. The details of this measure require great consideration, but I need not enter into them here. It is sufficient to mention that such a system exists in England and it is possible to work the details in a suitable manner. I doubt the possibility of making the tenants buy the freehold tenure even if it were just to do so. Of course every tenant, whatever be the duration of his tenancy, cannot be allowed to buy the freehold, and if a limit of time is placed, the landlord will see that the limit is not attained. The result will be frequent changes of tenancy and the consequent deterioration of the land.

5. As regards the third point, *i.e.*, tenants of Zemindars and Inamdars, the necessity of legislative action is undoubtedly urgent. At present the Zemindari tenants have hardly any security of tenure. Their rents are high, they are forbidden from making improvements on their land without the permission of the Zemindars, money is wrung out of them to the last penny and they are annoyed in every possible way, and their existence has become tolerable only by their ability to cheat the Zemindars in their turn by concealment of cultivation and bribing the subordinates entrusted with the administration. I think that the defect of the existing law is not merely in that, the onus of proving the right of ownership is thrown on tenants instead of on Zemindars, but also in not defining the rights of Zemindars as such in regard to the soil. A Zemindar may, of course, claim right in the soil in the capacity of a private individual, he having purchased it, or cleared a forest or acquired by some other legal means; but the point must be set at rest whether a Zemindar can, as a Zemindar, ever claim right in the soil on the mere ground that he exercised such rights as Zemindar both before and after the permanent settlement. As the law now stands, or at least as it is now interpreted, it does not decide one way or the other, and the Courts are left to decide each case on its merits. The opinions of judges vary so often, clear proof in a matter like this is so difficult, the ryots are so poor, a law suit is so expensive, and the Zemindar so rich and powerful, that the ryots are practically unprotected, and I think that it must be clearly laid down that a Zemindar cannot, as a Zemindar, claim any right in the soil, and that his right is merely confined to the realization of the Government share of the produce whatever it may be, he being of course competent to make such arrangements as may be necessary for securing his share of the produce; in other words, he being competent to arrange for the land being brought under cultivation at an early date. But when once the land is cultivated and a tenancy established, he should have no power to eject the tenant unless he refuses to pay the proper rent or assessment due to the Zemindar. This is exactly what the Government do in regard to the lands under their own management, and I do not think that there will be any difference of opinion in regard to the propriety or advisability of such a ruling in the interests of the country. The only question is,

whether such a regulation involves any breach of faith with the Zemindars. I certainly think not. The payments of the tenants were never regulated by Zemindars by competition, or a separate bargain made with each ryot, but the rents have always been settled with reference to some custom or rule, thus recognizing the occupancy rights of tenants. There may be cases in which the Zemindars did turn out occupants when they did not pay the sums demanded whether they were reasonable or not; but such cases are extremely rare, were never recognized by Government, and no legitimate inference can be drawn from them. Moreover the permanent settlement regulations recognize no such right in the Zemindar. On the contrary they lay down that Zemindars "shall enter into engagements with their ryots for a rent either in money or kind,"

Section 14, Regulation XXV of 1802.

that "where disputes arise respecting rates of assessment in money or divisions in kind, the rates shall be determined according to the rates prevailing in the cultivated lands in the year preceding the assessment of the permanent Jumma on such lands, or where those rates may not be ascertainable according to the rates established for lands of the same description and quality, as those respecting which disputes* may rise." The regulations do not give any power to Zemindars to eject tenants on the ground that they do not

* Section 9, Regulation XXX of 1802.

give the rates demanded of them, but, on the contrary, the case in which Zemindars can eject their tenants is specifically mentioned. It is only "where under-farmers or ryots may refuse to exchange mutual engagements in writing with proprietors or farmers of land" that "such proprietors or farmers have power to grant

Section 10, Regulation XXX of 1802.

lands of the under-farmers or ryots so refusing to other persons." It is contended by some, and indeed the view taken by the High Court is, that the latter section is applicable to cases in which ryots possess occupancy rights, but not to all tenants; but none of the regulations draw any distinction between ryots with occupancy rights and those with no such rights. The permanent settlement regulations everywhere speak of only two classes of persons having interest in the land, *i.e.*, Zemindars and tenants; and it is enacted that tenants should not be ejected except when they refuse to pay a proper rent, and it is certainly beyond my power to comprehend how the regulations could be reasonably construed in the manner they have been. It must also be remembered that rights of occupancy are not, as a rule, rights conferred by any act of State, but come into existence and grow with the advancement of the country. Rights of soil were unknown in former times when husbandry was rude and land available in plentitude. The year's crops represented the return to which the ryot was entitled for his industry and he did not care whether he possessed occupancy right in the soil or not, since if he was dispossessed of his land in one place he could cultivate in another locality; but times are now changing. Land has become scarce and it has become necessary to import skill and capital into agriculture, and cultivation therefore requires greater protection than it did when labor and seed were the chief investments in the soil, and I think there is nothing in the permanent settlement which should prevent the legislature from giving to the tenantry that protection of their growing rights which the conditions of society require. I would therefore unhesitatingly enact that Zemindars, as Zemindars, have no right in the soil, and if they want to establish right of occupancy, they can only do so by proving that they have acquired it in their capacity of private individuals. In other words, no Zemindar should be allowed to plead in a Court of Law that he always, as a Zemindar, exercised rights of occupancy and that therefore the ryots are tenants-at-will; but he must prove that he, or the person through whom he claims, acquired the right by purchase, gift or bequest or by investment of capital. If the ryot's right in the soil is once recognized, I think it follows that the improvements of the ryots on the land ought not to be taxed. I would not, however, give retrospective effect to this rule, as the measures would be highly detrimental to the revenues of the Zemindars and consequently distasteful to them; but there is no injustice whatever in declaring that the Zemindar should not *in future* be permitted to tax ryot's improvements on the land. If a ryot digs a well in his land and thus increases his produce, the Zemindar should not be allowed to share in the

increased produce, and the law must be definite on the subject. I know that in some Zemindaris ryots are actually prevented from digging wells in their lands without the permission of the Zemindar, which is not granted unless the lion's share of the profit is promised to the Zemindars. There are also several minor points with reference to the Rent Recovery Act VIII of 1865, which require consideration. For instance, it is altogether a question

Section 41, Act VIII of 1865.

whether the Zemindar should have the power of ejecting a tenant at all when arrear is not paid, and whether the interest of the tenant, whatever it may be, cannot always be sold; but such minor points can be considered when the Act is revised. The main point is whether Zemindari ryots should be declared or not as possessing occupancy rights in the same way as Government ryots are. If, however, the Zemindari tenants cannot be broadly declared to possess rights of occupancy, the next best thing is to institute a special enquiry by means of a Commission, and settle once for all who have occupancy rights and who have not. A clear register showing the ryots with or without occupancy rights in Zemindaris will be of immense value to the country and conducive to the improvement of property.

6. The above remarks apply more or less to the tenants of Inamdars also, with the difference that unlike Zemindars, Inamdars often occupy the double position of Government and tenant. They represent Government, because they are entitled to the assessment payable to Government, and it is not unfrequently that they have also occupancy right either because they were actual tenants before the land was made Inam, or because the rights of tenants have been purchased or otherwise acquired by them or by those who granted the Inam. Of course, there are cases in which the Inamdar has no title whatever to the land, and the only way of improving matters in regard to the tenants of Inamdars is by holding an enquiry and registering once for all the names of the real proprietors of the land.

7. With reference to the last point on which I am to give my opinion, I do not think the question admits of a difference of opinion. Certainly Government should have the means of obtaining statistics from all parts of the country within their dominion, and the present system of keeping accounts in Zemindari villages is anything but satisfactory. There is an office of Kurnam in each Zemindari village, whose duty it is to keep accounts, but he is not paid in any uniform scale. He gets too much in some places and too little in others, and neither Government nor Zemindar has any power to interfere with the scale of the fees he gets. He is responsible to the Zemindar and to Government, but neither has power to remove or suspend him and he can only be dismissed by a Civil Court after the tedious process of a regular suit. I think that much good will not result by placing the Kurnam under the control of the Collector, as his services are chiefly due to the Zemindar; but the results will, I believe, be satisfactory if the Zemindars are made responsible for furnishing any statistics concerning their estates which Government may require, he dealing with his establishment in the best manner he likes. It is but right that each landholder should furnish to the State such information in regard to his estate as may be necessary for public benefit, and the system of Government appointing their own servants for furnishing information in regard to the estates of private individuals appears to me to be altogether faulty.

READ—the following Proceedings of the Board of Revenue, dated 26th September 1881, No. 2122:—

Read—again the following Proceedings of the Board Revenue, dated 13th April 1881, Mis. No. 3955.

Read—the following G.O., dated 18th March 1881, No. 475, Revenue.

* * * * * *

Resolution—dated 13th April 1881, Mis. No. 3955.

Messrs. Foster Webster, J. F. Price, and H. E. Stokes, and Mr. Macartney, Agent to the Rajah of Sandúr.

COMMUNICATED to the gentlemen noted in the margin, who are requested to favor the Board with their remarks upon the subject.

(True Extract.)

(Signed) E. GIBSON,
Acting Secretary.

Read—also the following letter from H. E. STOKES, Esq., Acting Collector of Salem, to the Secretary to the Board of Revenue, dated Atúr, 18th May 1881, No. 1291:—

I HAVE the honor to reply to Board's Proceedings, No. 3955, dated 13th April 1881, calling for report on proposals of the Famine Commission for restricting subletting and abolishing occupancy rights held by others than actual cultivators, and for the amendment of the rent law.

2. I am of opinion that the proposals on the first subject are inexpedient and impracticable, and could only be justified by proof of widespread rack-renting of land and systematic oppression of the cultivating classes, of which however proof is, in my opinion, wanting.

3. The wet lands and the more fertile and improved dry lands are largely held on putta by persons belonging to the non-cultivating classes, who are frequently non-resident in the villages where they hold the lands. The holders are usually Brahmins and Chetties in the towns. The possession of land is sought as an investment of a secure kind, and the rate of interest expected on the principal sunk is very low. I am informed that the holders are well content with 4 or 5 annas per mensem on each hundred rupees, *i.e.*, about 3 or 3¾ per cent. per annum. The actual cultivators usually get leases running for four or five years, and when there are no leases, they work on the sharing system, the most usual agreement being "Arthakandáyam," under which the Puttadar takes half the gross produce in grain and pays the Government demand. When the latter is paid by the cultivator, the landholder's share is usually one-fourth, sometime less, seldom more. The straw always goes to the cultivator. Good tenants under either system are rarely disturbed; they are too valuable to the landlord, who frequently helps them in purchase of cattle or the like.

4. I think it is too hastily assumed that this system is new, and the result of British rule and the operations of the Courts. I believe that such arrangements have always been part of the "ancient custom" of the country, and I should like to see some proof of the assertion that thay have even extended under British rule. It is possible that too hasty generalization has been made from the known course of proceedings between money-lenders and the thriftless class of larger proprietors for the most part created at the permanent settlement.

5. To cancel all these arrangements and under-tenures by a stroke of the pen would revolutionize native society and amount to wholesale confiscation; while the existence of no evil, of which they are shown to be the cause, is proved, and it is doubtful whether the ends in view, viz., improvement of agriculture, and a more assured position to the ryot which would prevent him becoming a burden to the State in time of famine, would be attained.

6. It is not clear whether the proposal that the tenants shall compensate the landlord for the loss of his occupancy right, which the Commission make in paragraph 32 of the extract, would be applied to the cases of sub-letting by occupancy tenants above described. I suppose they would not propose that the holdings should be cancelled without compensation, nor that the State should find the money; and therefore the compensation must be paid by the cultivators under some system such as suggested in the paragraph quoted. If so, it is certain that for many years to come any surplus which the ryot could secure would be absorbed in making these

payments, and the fund for the improvement of the land would thus be decreased. These petty landlords are now, partly owing to the settled and secure character of the investment and partly from sentimental preference for it, content with a low rate of interest; and if they are peremptorily ejected, their interest must in fairness be capitalized at a very much higher rate than they now obtain. Also the fact that they must receive back their capital in driblets and not in a lump sum must be allowed for. Probably the rate of interest to be taken could not be less than 15 per cent., and the cultivating ryot would find the annual payments, over whatever period they were spread, a very heavy burthen. In fact, the proposal amounts to this that the cultivators should be compelled to purchase their holdings, and to be started on their career of improvement and amassing of capital with a load of debt about their necks. The cultivator's savings for a generation would probably go to this object and not to the improvement of his land. He would be for years impoverished, not enriched.

7. The abolition of the petty landlords under discussion would lead to diminution of agricultual capital in another way. These people are all engaged in trade or other occupations, and their savings gravitate towards agricultural investment. They would be prevented from applying funds to agricultural improvement under the new proposals. There is a further and by no means unimportant consideration, viz., that these people represent the brains of the agricultural mass, and that it is through them that improvement of lands or of native methods is most likely to be realized.

8. Even supposing the saving, represented by the landlord's right, to go direct into the ryots' pocket, the holdings are too small ever to enable them to hold such a surplus as to be able to pass through a real famine without coming on the hands of Government. The change would be too infinitesimal to make any difference in this respect.

9. As to the practicability of the scheme, I would ask what is a *bonâ fide* cultivator? There are infinite degrees of intimacy in connection with the land, from the man who himself holds the plough to the man who resides at a distance, never sees the land, and merely receives his rent charge from his sub-tenant. Where is the line to be drawn? Who is to institute the interminable inquiries which will be necessary to settle the position of every registered landholder in the first instance, and who is to maintain the constant supervision which will be required to see that each cultivator retains his status as an occupancy tenant? It is futile to hope that the cultivators themselves will do the work by coming into the Rent Courts to enforce their claims. Their position is consecrated by custom and time, and they will not take the initiative in an attempt to change it. Even if the whole body of rent chargers are expropriated and abolished, a fresh body will be formed in course of time, and legal ingenuity will be baffled in attempts to prevent it.

10. So far I have been writing with reference to sub-letting by occupancy tenants, meaning thereby registered Puttadars in Government land, and holders of puttas under Mittadars. The occupancy rights of the latter are not questioned in this district, and the ruling of the High Court that the law does not recognize any such rights is not known. The right was expressly conceded in the early Ryotwar settlements which preceded the formation of the mittas, and it is recognized as attaching to all putta tenures since created in permanently-settled estates. It is equally clearly understood that there is no such right in the Jodigai Agraharam or whole Inam villages; the ryots of Trishveka Agraharams are of course in the same position as ryots in ordinary Government villages. With reference to paragraph 40 I would observe that there is not the slightest doubt that in the settlement it was contemplated that Government ryots should deal with their lands as they pleased.

11. I fully agree as to the necessity of a revision of Act VIII of 1865, both with a view to make clear the position and rights of occupancy tenants, and to correct the confusion and uncertainty which pervade the Act and make it so difficult to work. But in the last sentence of paragraph 42, the Commission seem to think that occupancy right forbids disturbance in any event, whereas non-payment of rent is recognized as a sufficient reason for ejection.

12. I do not of course question the desirability in the abstract of giving security of position to the actual cultivators; but I am of opinion that proof is wanting of the existence in Madras districts of evils resulting from the present state of things, and of sufficient magnitude to justify the serious interference with rights of property and freedom of contract and the tutelage of the cultivating classes, which are involved in the proposals of the Commission. I believe further that the measures suggested would fail to produce the effect desired.

———

Read—also the following letter from J. MACARTNEY, Esq., Agent to the Rajah of Sandúr, to the Secretary to the Board of Revenue, dated Sandúr, 16th July 1881, No. 62 :—

With reference to the Proceedings of the Board, No. 3,955, dated 13th April 1881, I have delayed my reply, not from any want of interest in the subject, nor from any deficient sense of its importance, but solely from a feeling of incompetence to discuss, with even a moderate degree of satisfaction to myself, a question of such intricacy and importance. Not having before me, *in extenso*, the report of the Famine Commission, I can only remark on such of the extracts furnished as touch upon matters with which I may have had more or less experience.

2. The evils arising from the sub-letting of land and living on the difference between the rack-rent and the privileged rate secured to the tenant by the law are such as doubtless call for redress. The practice involves a fraud on the community, which, in securing to the tenant permanent rights, the legislature could never have contemplated sanctioning. At first view I was strongly inclined to deprecate any measure which would seem to violate security of tenure, by probably allowing Government officials to step in and question the tenant's right to hold on by his ancestral land so long as he continued regularly and punctually to pay the Government demand. It seemed to me that a tenant who had fallen into dilapidated circumstances might be compelled to let out his land and to follow some other occupation for a time, but yet with the hope of being able subsequently to resume the cultivation of his paternal acres, and that a legislative measure which would effectively prevent the sub-letting of lands at more than the Government rate would meet the difficulty. But on further consideration it was obvious that the evil would only be partially met so long as the *bonâ fide* cultivator had no right of permanent occupancy, and that some limits should be assigned to such an unsatisfactory state of things. Granting that the actual cultivator, even at the rack-rent, which he pays, can manage to earn a bare livelihood, he would doubtless be relieved in a measure by a reduction in his rent, yet the insecurity of his tenure must ever operate so as to debar him from that improvement of the land which is essential to the agricultural prosperity of the country. Without, therefore, positively prohibiting a tenant from sub-letting, he might justly, I think, so far be discouraged from doing so, by the rendering illegal of any agreement between him and the actual cultivator, which imposes on the latter a rent exceeding the Government rate, and in way of penalty by making him liable to a fine of double such excess. After a limited period considerately fixed, if the Government tenant is still unable to resume the cultivation of his land, in the interests of the community at large, his right of permanent occupancy, the benefits of which he confessedly cannot avail himself of, might fairly be transferred to the *bonâ fide* cultivator. On this supposition the Government tenant would be no loser in a pecuniary point of view, as he would have degenerated to the mere position of a *medium* through which the rent of the land reaches the Government Treasury, while, by continuing to hold on, he deprives the cultivator of the legitimate fruits of his industry and enterprise, and the community of the benefits which might accrue to it from a superior style of husbandry.

3. For the improvement of the ryots' position, I am disposed to regard the diffusion of education among them as of the highest importance. The recent increased efforts of the Government in this direction, by the supervision and encouragement of primary schools, may reasonably be expected to lead to the most beneficial results. The ordinary ryot can with

ignorant of figures and their value. As he is always impecunious, he his ever borrowing, and is seldom, if ever, out of debt. He is readily induced to agree to a rate of interest which, if he understood the simplest operations of arithmetic, he would see to be simply ruinous. He is wholly dependent on his Soucar for all knowledge as to how he stands, and, not being able to question anything, is easily led to sign bonds for sums involving items of heavy interest, and bearing equally burdensome interest for the future. Thus his crops often are mortgaged in advance and he continues to live and cultivate on occasional advances from his creditor, and thus all the profits of his labor are absorbed by the latter, while he himself can never attain a position of independence and comfort. Until at least he is better educated, the law might help him in his struggle with rapacious creditors, by enacting that all consolidated bonds in agricultural districts should specify the several items of which they are composed. In case of litigation, such a provision would be some check on unscrupulous money-lenders, while it would enable the Court to determine whether the accrued interest was legitimate and did not exceed the aggregate principal. It is also open to question whether the law as administered is not too expensive in its processes. It is true that the Government cannot afford to administer justice at a loss to itself, but it is equally obvious that it ought not, to any considerable extent, gain thereby. It appears to me to be worthy of consideration whether the heavier expenses of litigation in country districts might not often be avoided were Judicial Officers authorized, with the consent of the parties, to act as umpires between them. The ryot seldom questions his liability to fulfil the conditions of his bond, and an arrangement might often be come to in the first stage of litigation if the inflexibility of the law did not present a hindrance.

4. Another consideration may be mentioned, which, though it bears only directly on the position of the ryots, may be regarded as of some importance. I refer to the increasing want of sympathy between them and their immediate rulers. In former times it was the practice for Revenue Officers to be appointed to districts where they were allowed to remain for a long time, and where some of them gradually rose to the highest positions in the service. Mr. Pelly may be cited as an instance in this district. They thus acquired in the course of their service a special knowledge of the district, the people, their language, their wants, and their general condition. They naturally took a deeper interest in, and were much more accessible to, them, and came often to be regarded as their friends. The frequent and sweeping changes which are now made in the administrative staff of districts have strongly tended to subvert this desirable state of things.

5. The tenant-at-will system is unquestionably a serious evil, and most hurtful to agricultural prosperity, and I am strongly inclined to the opinion that some such measure as is proposed by the Famine Commissioners might do something towards remedying it. I can scarcely hope that it would completely meet the case, for, although the law were to offer such facilities for the acquisition of security of tenure, it would still remain to be seen whether the cultivators generally would avail themselves of its provisions. It may, however, reasonably be presumed that a large proportion of the best and most thrifty ryots would gladly do so. The danger, as it seems to me, would lie in over-estimating rather than in underestimating the amount which the landlord really gains by his tenant not having occupancy rights. It is quite clear that the system tends to impoverish the land and deteriorate its value; in fact to keep it at a *minimum* of productiveness. Now when bad seasons come, the tenant, already sufficiently weighted, probably finds himself unable to cultivate, gives in his razinamah, and retires from the struggle. The land is either for a time thrown out of cultivation, or is again rented in the most unfavorable circumstances for the landlord. It may therefore be assumed that it would be for the interest of the latter in the long run to fix an equitable rent and give the ryot that security which can alone ensure to him the fruits of his labor and expenditure.

6. Not having any practical knowledge of the working of the law as mentioned in paragraphs 41 and 42, I would rather decline to remark on the subject.

Read—also the following letter from J. F. PRICE, Esq., Collector of the Chingleput District, to the Secretary to the Board of Revenue, dated Saidápet, 16th July 1881, No. 273 :—

I have the honor to reply to the Proceedings of the Board of Revenue, Miscellaneous No. 3955, dated 13th April last, and to express may regret that, owing to my having been on leave and to my time having since my return been fully occupied with other matters, I have been unable to do so at an earlier date.

2. I do not quite comprehend upon what precise points an expression of one's views is sought. The drift of the remarks of the Famine Commission is, I take it, that it would be desirable to give all actual cultivators of the soil, who are sub-tenants and occupiers, some permanent rights of occupancy in order to enable them to meet times of distress, thus improving their status, to put down rack-renting, and to place Curnams of settled estates in such a position that they would have to render accounts to Government whenever required.

3. It would, no doubt, be highly desirable if something of the kind suggested as regards sub-tenants and occupiers could be done, but any decided move towards such an improvement would be met by covert opposition and intrigue to an extent which, I feel assured, would be far greater and more prolonged than would seem to be anticipated.

4. Madras Act VIII of 1865 is an enactment which is supposed to guard the rights and to protect the interests of tenants and sub-tenants, having due consideration, at the same time, for those of landlords. My Sub-Collector, Mr. Farmer, is drawing up a paper in which it is proposed to bring forward some of the iniquities which can be perpetrated under this Act and to show what intrigue and misrepresentation on the part of persons connected with the landed interest in this very district took place when the Bill of Act VIII of 1865 was under consideration. This I shall submit in due course for perusal.

5. The whole Act requires careful revision and alteration. Whatever may be *implied* by it—the ablest Civilian Judge, who has ever sat upon the Bench of the High Court of this Presidency, once remarked to me that it was the most difficult Act in the Statute book to comprehend—it is practically in favor of the landlord and against the tenant, and the former has, as far as I can see, not been slow to perceive his advantage and to avail himself of it. It is the weak who should be protected against the strong! it is the strong who are enabled by the law, ostensibly designed in the favor of the weak, to oppress. In this assertion I believe that I should be borne out by the experience of every officer who has ever had any practical acquaintance with the Act.

6. It would be a very difficult task indeed, desirable though it might be, to give effect to the suggestions of the Famine Commission in regard to occupancy tenants. This class of persons is, as a rule, poor; they live from hand-to-mouth and are liable to be at any time turned out without a penny of compensation for improvements made. They are very frequently ground to the dust by the landlords, who make them pay for the actual tenants by seizing their crops, &c., in satisfaction of arrears of rent, and they, generally speaking, are so impoverished that they cannot afford to fight their cases in the Revenue Courts and those to which the judgment of a Collector can be taken in appeal.

7. A step towards improvement of their condition would be effected if it was made illegal to attach crops, &c., unless it could be shown that they were grown by, or the actual property of, the registered tenants. Much good might also be done by removing entirely from the scope of Act VIII of 1865 all cases involving sub-leases, or sub-tenancies, and declaring that rents due under such contracts would be recovered only by suits in a Civil Court. This would apply equally to lands held under a Government putta or in a settled estate.

8. I consider the petty zemindaris, muttahs, shrotriems, and inam villages, with which the country is strewn, one of its greatest curses from an agricultural point of view. I add to these in this district the mirassi system, which has for

years been a bar to improvement. The mode of collecting the arrears of revenue due by the owners of the properties mentioned above is cumbrous and lengthy, whilst on the other hand the powers which the law gives them to screw their tenants and harass and worry sub-tenants are very considerable.

9. If all rents in kind were abolished and a money-rate insisted upon in all settled estates, &c., another very fruitful source of tyranny on the part of landlords and of suits in Revenue Courts would disappear. This would require a survey and settlement, but I do not see why Government should not, except in the large and ancient zemindaris which are hardly in the nature of tenancies, enact that this should be done, and that all charges for second crop, irrigation of dry lands from tanks belonging to proprietors, &c., should be the same as in Government lands. Certainly one half, if not more, of the suits which come into Revenue Courts arise from there being no fixed money assessment, and it is not by any means an infrequent occurrence for landlords to drag tenants and sub-tenants into the Criminal Courts on the ground that they fraudulently carried off a portion of the crops to which they were not entitled.

10. As regards the question of Curnams, it appears to me most absurd that an individual, who is practically a private employer, cannot, though he can appoint a servant of this class, get rid of him except by a Civil Suit. I think that the nomination to the office of Curnam in settled estates should lie with Zemindars, but that in the interests of the State, the power of appointment and dismissal should lie with Collector of the district, who should have authority to compel such Curnams to, whenever called upon to do so, submit such statements, returns, and accounts as Government may, from time to time, direct.

11. As regards the remarks made in paragraph 40 of the Commission's observations, I would advance that the Land Revenue Settlement could hardly have contemplated that ryots were not to sub-let. If this had been the case, Clause 3, Section 1, Act VIII of 1865, would have been uncalled for. I do not see what advantage could be attained by the suggestions made in the concluding portion of the paragraph quoted above. The present arrangements would only reappear under a different form, the sub-tenants being called the servants of the tenant, instead of what they now are.

12. The subject of allowing long possession as a sub-tenant, or certain other circumstances, to give an actual right of occupation, is one which, unless Government wish to raise a nest of hornets about their ears, must be entered upon with considerable caution. I think that, for the present, it would be enough to curtail the powers which landholders have under Act VIII of 1865; to force all tenants sub-letting to recover their dues in a Civil Court only; to protect, and that very closely, the poperty of sub-tenants from attachment and sale on account of rent due by the registered tenant's; to abolish all rents in kind and compel the introduction of a survey and money-rates in all shrotriem, inam villages and permanently-settled estates, not being ancient zemindaris; and to bring all Curnams in zemindaris, &c., under the control of the Collector.

13. To carry out these measures, if deemed feasible and desirable, would probably take some time and would pave the way for, at some future period, legislating upon the question of occupancy right, if it was found that the alterations in the Act, &c., suggested did not render the position of cultivating sub-tenants sufficiently secure.

Resolution—dated 26th September 1881, No. 2122.

By the order contained in the Board's Proceedings quoted above the Government refer for an expression of the views of the Board certain extracts from the report of the Famine Commission relating to the position of cultivating tenants in the Madras Presidency. These extracts embody the opinions of the Commissioners upon the questions of the sub-letting of land for cultivation and the position of tenants in relation to their landlords.

2. Regarding the question of sub-letting the Commissioners, having stated that the occupancy right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator, proceed to discuss the means by which, in their opinion, it might be possible and desirable to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such rights; and they recommend that the practice of sub-letting by an occupancy tenant should be discouraged or even forbidden; and further that, when such right is possessed by a tenant, it should be forfeited by his ceasing to be a *bonâ fide* cultivator and pass to the person who, as his sub-tenant, occupies his place.

Paragraph 31.

3. Upon these recommendations the Board observe that whereas their object is to prevent rack-renting by middle-men and the oppression of the cultivator, it has not been proved that the evil which it is desired to remove exists in this Presidency to such an extent as to justify a measure confiscatory in character, and which, if it were possible to carry it out, would involve the complete subversion of established rights and customs relative to property in land. Nor is it apparent how the remedy proposed would have the effect of materially improving the cultivator's position; for, if it prevented him from having recourse to the money-lender in time of need, the benefit would be by no means unmixed either to himself or to the community; unable to borrow he would be unable to till and loss would be the result to both. The Commissioners seem to be somewhat uncertain whether their proposal will be found practicable, and the Board have no hesitation in stating that it would be quite impossible to put it into practice. Throughout the world, it is in the natural order of society that some men possess capital and some do not; the former become owners of the land and the latter rent it from them or work on it for hire. Such an enactment as that proposed would only cause a temporary disturbance of existing relationships, which in process of time would revert to their original state.

4. In the next paragraph the Commissioners make suggestions for securing to tenants-at-will occupancy rights in the lands which they hold without injury to the landlords. Unless the word injury is here used in a restricted sense, it is difficult to conceive how this proposal is feasible. The Commissioners, however, explain how they would propose to carry out the measure, viz., by making the tenant pay an enhanced rental, the increase being calculated with reference to "the annual amount which a landlord gains by his tenant not possessing occupancy rights." The Board believe it would generally be found impossible to frame an estimate in the manner described, and even if it were possible to do so, the advantage to the tenant would be doubtful. Upon this point attention is invited to the remarks of the Collector of Salem with which the Board entirely concur.

Paragraph 32.

5. Turning to the first paragraph* of the second extract, it is hardly necessary to say that power† to sub-let is the undoubted right of every holder of land under a ryotwari putta. This right and that of transfer by sale are essential privileges of the holders of land under the ryotwari system which should on no account be interfered with. As regards the proposal that sub-tenants should be recognized and the area, &c., of their holdings recorded in the accounts kept by Government, the Board consider that such a measure is neither necessary nor expedient. Such registration would not affect the status of a sub-tenant, while it would throw upon the Revenue establishments, already over-worked, an enormous amount of additional labor.

* Paragraph 40.

† Board's Proceedings, dated 22nd March 1881, No. 473 (G.O., 11th May 1881, No. 740).

6. The remaining paragraphs‡ requiring notice bear upon the relation of Zemindars and Inamdars to their tenants. The amendment of the Rent Recovery Act (VIII of 1865, Madras) has been proposed on former occasions, and the Board are of opinion that the revision of that enactment should be no longer delayed. The object to be kept in view should be to define existing rights as established

‡ Paragraphs 41, 42, and 43.

by customary usage and make provision for their enforcement, and not to create by statue new relationships between landlord and tenant. In connection with this part of the subject the Board would refer to their Proceedings§ noted in the margin and repeat the recommendation made at paragraph 8 thereof.

§7th March 1879, No. 618.

(True Copies and Extract.)

(Signed) E. GIBSON,
Acting Secretary.

To the Secretary to Government, Revenue Department.
Copy to all Collectors.

Minutes by the Honorable W. HUDLESTON, dated 17th March and 19th October 1881.

Minutes by the Honorable D. F. CARMICHAEL, dated 3rd April and 14th October 1881.

ORDER—dated 29th April 1882, No. 437, Revenue.

Land Revenue, No. 24.

In the first of the papers read above, the Government called upon the Board of Revenue to enquire and report whether the results anticipated by them, as affecting the fixity of tenure of the Zamindári ryots, from the judgment of the High Court in Special Appeal No. 9 of 1870,* had ensued and to what extent, and the second paper is their reply. The third embodies a letter from the Government of India asking for the opinion of this Government on certain suggestions made by the late Famine Commission for improving the position of tenants in this Presidency. The next following two papers are the only replies yet received to the order of this Government inviting remarks on the suggestions last referred to.

* Volume VI, Madras High Court Reports, pages 164—174.

2. The Famine Commission, in the extracts from their report printed in the G.O. of 18th March 1881, refer particularly to the custom of sub-letting by holders of occupancy rights, which they consider to be attended with ill-consequences, and suggest that it should be discouraged, or even, if possible, forbidden.† They also, adverting to the High Court's judgment above referred to, point out the expediency of legislation in view to the protection of the occupancy rights of the Zamindári ryot.‡

† Paras. 31 and 32.

‡ Paras. 41—43.

3. The far more momentous question last indicated will be noticed first. Whatever may be the precise scope and effect of the High Court's ruling, there seems to be no longer any room for doubt that it has been judicially interpreted, though yet within a limited area §, as declaring the tenure of a Zamindári ryot terminable at the will of the Zamindár at the end of the year, and has had the effect, over a more extended area, of enabling the Zamindárs to impose arbitrary terms and levy enhanced rents from the ryots. It is clear, therefore, that Madras Act VIII of 1865 has failed to assure to ryots holding under assignees of the public revenue that permanency of tenure, as

§ In Vizagapatam generally and in one case in Nellore—*vide* Collector's letters recorded in Board's Proceedings, dated 7th March 1879, No. 618

Section 12.

well as security against exaction and oppression, which that enactment, as likewise the Regulations of 1802* and 1822† which it consolidated, contemplated and intended to assure to them.

* XXX Section 12.
† IV and V, Section 8.

4. The position, having regard to the magnitude of the interests involved, is fraught with anxiety, and the Right Honorable the Governor in Council is satisfied, that remedial measures cannot be safely deferred any longer. He accordingly resolves to appoint a Committee, composed of the gentlemen named in the margin, to draft a Bill calculated to remove all doubt as to the conditions of a Ryot's tenure of land. The Government would be disposed to distinctly lay down, that the ryot and his heirs or assigns possess a right of continuous occupancy, subject only to the condition of payment to the Sirkar or its assignee of the "*Sirkar*" *share* of the crop or its value as established by proved custom, mutual agreement or decision of competent authority, and evidenced by the Puttah and Muchilka, unless these documents have been dispensed with by proved mutual agreement—with liberty to dispose of such right by sale, gift or otherwise, until evicted by due course of law for failure to discharge such legally established and limited charge on the land, or to enter into an agreement in the form prescribed by law with respect to such limited charge.

Honorable Mr. Carmichael.
Honorable Mr. Sullivan.
Mr. Forster Webster.
Mr. H. E. Stokes.
The Government Pleader.

5. The Government consider that, as suggested‡ by the Famine Commission, the Bill should provide that all tenancies in Zamindari or Inam lands *primâ facie* carry a right of proprietary occupancy, and should throw on the Zamindár or Inámdár the *onus* of proving the fact from which a non-occupancy tenure has to be inferred. In like manner, where a special contract at the time of *first* occupancy, reserving to the superior holder the right of eviction or a higher rent, is alleged, the *onus* of proving such contract should rest on the party pleading it.

‡ Paragraph 42.

6. As regards the question of sub-letting, the Government fully agree in the views expressed by the Collector of Salem and the Board of Revenue as to the inexpediency of any State interference. Whatever ill-consequences of such a system, due perhaps to peculiarities of tenure, are observed in other parts of India, none such are apparent in this Presidency. Here, in the first place, the number of ryot proprietors, who do not take part in the cultivation themselves, is comparatively very small; secondly where they have sub-tenants cultivating for them, they treat them well; thirdly their position is quite different from that of Zamindárs and Inámdárs—the assignees of the State revenue from land.

7. The Famine Commission assume a state of things under which "the privileged tenant" has no interest in improving the land; but such is not the case in this Presidency, where the Government ryot fully appreciates the benefits which accrue to himself by the improvement of the land, which is his own property subject only to a limited charge for State dues; his available means are as a rule devoted to its improvement.

8. In this Presidency, the ryot proprietor is, in the vast majority of cases, to all intents and purposes the "*bonâ fide cultivator*" to whom the Famine Commission desire to restrict the occupancy right. If, however, by "bonâ fide cultivator" they mean that person only who actually holds the plough or personally labours on cultivation operations, the measure which they recommend, viz., "*to prevent any one who is not a bonâ fide cultivator from acquiring or retaining such rights*" would be subversive of property in land throughout the country, and would, by depreciating the value of land, defeat the very object in view, viz., to augment the wherewithal for the improvement of land. As pointed out by Mr. Stokes, the compensation which the cultivating tenant would have to make to the expropriated owner would, for many years, leave little to the former to invest in the improvement of land; while, at the same time, the savings of men engaged in trade and other occupations, now invested therein, would be lost to it. The whole scheme is, as clearly shown by Mr. Stokes,

impracticable, as it would very often be most difficult, if not altogether impossible, to ascertain whether the holder of the occupancy right were the "actual cultivator" or not, whatever might be the precise signification intended to be attached to the term.

9. Ordered that the following letter be despatched to the Government of India:—

(True Extract.)

(Signed) E. F. WEBSTER,
Acting Secretary to Government.

To the Hon. D. F. Carmichael.
" the Hon. H. E. Sullivan.
" E. F. Webster, Esq.
" H. E. Stokes, Esq.
" the Government Pleader.
" the Board of Revenue.

Letter—from the Secretary to the Government of Fort St. George, to the Secretary to the Government of India, Revenue and Agricultural Department, dated 29th April 1882, No. 438.

Land Revenue, No. 25.

* Dated 29th April 1882, No. 437.

With reference to your office letter, dated 24th February 1881, No. 160, I am directed to forward, for the information of the Government of India, copy of the Proceedings* of this Government, in which the suggestions of the Famine Commission, on the important questions of occupancy right in Zamindâri and Inâm lands and of the custom of sub-letting by proprietary occupants, have been fully considered.

I have the honor to be,
Sir,
Your most obedient servant,

(Signed) E. F. WEBSTER,
Acting Secretary to Government.

Exd. W. H. French.

20 Copies.

Govt. of (1882) Madras.

REVENUE.

Order, &c., dated 20th April 1882, Nos. 137-138.